United States Court of Appeals

for the Second Circuit

APPENDIX

74-2542

United States Court of Appeals

For the Second Circuit

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Docket No. 72-1064

CHRIS-CRAFT INDUSTRIES, INC.,
Plaintiff-Appellant,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, THE FIRST BOSTON CORPORATION, PAUL L. MILLER and N. BAYARD,
Defendants-Appellees.

Docket No. 72-1120

BANGOR PUNTA CORPORATION,
Plaintiff-Appellant,

against

CHRIS-CRAFT INDUSTRIES, INC.,
Defendant-Appellee.

Docket Nos. 72-1053 and 72-1140

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellant,

against

BANGOR PUNTA CORPORATION,
Defendant-Appellee (Cross-Appellant).

UNITED STATES COURT OF APPEALS FILED JAN 8 1973 A. DANIEL FUSARO, CLERK

APPENDIX ON APPEAL FROM FINAL JUDGMENTS OF UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK

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Counsel of Record Are Listed on Inside of Front Cover

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Q As I understand your testimony, you recalled this telephone conversation with Mr. Gordon was on a Friday night, is that correct?

A No, no. Mr. Gordon and I spoke on Thursday. He came to see us on Friday, I believe, in the morning.

Q And when was your conversation with the gentleman from Singer & Friedlander?

MR. LIMAN: I have forgotten his name.

A I am sure we contacted him on Friday. Mr. Woudhuysen talked to him. I couldn't swear that I talked to him.

Q The question is when do you think you talked to him.

A Well, I know that we talked to him on Friday the 31st. We must have talked to him on Friday the 31st. We needed an answer by Monday.

THE COURT: What time of the day did you talk to him?

THE WITNESS: I would assume that we talked to him in the afternoon, which would have been seven o'clock, eight o'clock London time, at night.

Q My question is --

A We may have each talked to him in the morning -- maybe you could check our phone records -- because Mr.

Gordon definitely asked us whether he could get this money on Thursday, and we don't waste much time on matters like that.

So the chances are that we got in touch with Francis Hock possibly even Friday morning and said we would "get the details and come back to you."

THE COURT: The net of it is that it was handled substantially by your partner, then, and not by you?

THE WITNESS: I think so because I was leaving --

THE COURT: I understand that.

THE WITNESS: He should be called.

THE COURT: I am just trying to delimit what you personally know and what your partner would know. That's all.

THE WITNESS: My partner would know about the discussions with Singer & Friedlander because he had them.

BY MR. PENNOYER:

Q And whatever you know is based upon what your partner told you, that is, as to the conversations around the 31st?

A He has got cables and he has a letter, and many

things that indicate the terms, and all about the discussions, and we were also keeping informed where Chris-Craft really wanted the money.

Q The letter that you referred to is the one that came about February the 18th that you have mentioned previously?

A That's my recollection. February 18th -- had pretty much told them that Chris-Craft did not want the money. I believe it was that, at that time.

Q Now in your discussions with Mr. Gordon, did he mention the fact that Chris-Craft had senior notes outstanding that would require waivers in connection with any further unsecured loans?

A Well, if he did mention it I assume that he said he could probably get the waiver.

Q But, as I understand, you don't remember him mentioning it?

A I don't remember offhand.

Q So you don't remember whether he said he could get the waivers or not, isn't that correct, Mr. Burnham?

A I don't remember whether he brought that to my attention, but that is --

THE COURT: YOu don't remember any discussion with him about the financial position of Chris-Craft at

that time, do you?

I thought your previous answers all were directed to saying that you didn't go into that, and you were waiting for a time when the request became concrete.

MR. LIMAN: I take exception to your Honor's characterization of his testimony.

THE COURT: You may take exception. I am asking a question.

(To the witness) Is my understanding correct of what you testified, that there was no effort made by you personally to get an up-to-date, current reading on Chris-Craft and their outstanding obligations at that time?

THE WITNESS: I would consider, your Honor, that they had the same information in London that we had in New York, from the financial press, and we took the position that they needed this money for a tender.

They also had the Piper balance sheet, which was also available, and obviously this money would have given Chris-Craft control, and, as I said to you, that had we gotten down a little further, I am sure they would have then said what other --

"Let's update the financials that are publicly

available."

THE COURT: I understand that --

THE WITNESS: I don't think --

THE COURT: Mr. Pennoyer's questions to you --

THE WITNESS: I don't think I requested any information at this time.

MR. PENNOYER: Your Honor, may I move to strike the last answer as conjectural?

THE COURT: I understand theframe in which it was given, but Mr. Burnham has stated, repeated again, what he said before: that he did not at the time ask for any updated information, because at that moment it wasn't requisite, we will say.

Q Mr. Burnham, did Chris-Craft come back to you around August of 1969 to see if they could or you could arrange with them to have more cash -- August or September of 1969?

A I can't recall it.

the term "marketability" as used by Mr. Liman in his question? What did you understand that term to mean?

A Marketability means to me the ability to be able to sell a significant amount of whatever you have to sell, not just a little amount that sets a price.

Q Is there any factor in your definition concerning what the price of the security is that you have to sell?

A You are asking something about marketability not relating it to any particular company, but let's say that a company has two million shares outstanding and under normal conditions the trades may be three or four hundred shares a day, I would say that is rather unmarketable. If it traded ten, fifteen, twenty thousand shares a day, I would say that is relatively marketable. That is a judgment we have to make when we lend money on securities, what is the market. The marketability is a matter of volume.

Q Let's direct ourselves to Piper Aircraft Company, which is the security we are talking about -- isn't that correct?

A All right.

Q This is Piper Aircraft Company.

Wasn't there an active market in Piper Aircraft

Company stock for many years on the New York Stock Exchange?

A I never thought it had a really active market, no.

Q It was traded daily?

A It had a market.

Q Had a price?

A Had a market. It was never known to have a really broad market.

Q Well, would you firm have refused to underwrite any Piper securities because of this this market?

MR. LIMAN: When?

Q At any time prior to September 5, 1969.

A That is a hypothetical question. I mean, I would want to know a lot more about it. Who is selling, the company? What are we talking about?

Q All right. Getting back to marketability, your definition of marketability is only the question of the difficulty in selling the stock, is that correct?

A Or buying.

Q In this case we are talking about selling, is that correct?

A You are talking about it.

Q That is what we are talking about right here in this courtroom, this is what you are expressing your

opinion about.

A You mean selling Chris-Craft's block?

Q That's correct.

A Yes.

Q You testified that if you had no assurance from Bangor Punta, satisfactory insurance, to use your words, that Bangor Punta would not merger, it would be extremely difficult to sell this Piper block.

Why would it be extremely difficult?

A Because Bangor Punta is a conglomerate and Piper is a known factor. It is very easy to analyze Piper, very difficult to analyze Bangor Punta.

Q Why would you find it necessary to analyze Bangor Punta if you were selling Piper shares?

A Because if you didn't have assurance they were NOT going to take it over you would have to assume they were going to take it over and that you might get a security you didn't want to buy.

Q What makes you think you have to get assurance from Bangor Punta in the event there is a merger?

A I just assume it.

Q Have you ever heard of dissenting stockholders appraisal rights?

A Yes.

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mony?

A Under no circumstances would we do it. I don't say nobody else would.

Q There might be other firms on the street that would be willing to take this offer?

A That would be up to them. We wouldn't do it.

Q Directing your attention to the press release which Mr. Liman showed you, your testimony is you read that press release on May 8th or 9th, is that correct?

A Correct.

Q You didn't read that press release, you read something else?

A I read what was on the Dow-Jones.

Q You read the Dow-Jones and your testimony is that when you read the word "value" you said in your mind that this was market value, is that correct?

A Yes, sir.

Q And your testimony is that the language "In the opinion of First Boston" had no meaning to you, is that correct?

A Very little.

Q Well, what meaning did it have to you?

A The only meaning it would have to me is that because I think First Boston is a very fine company they

would see to it that the package of securities would make Piper sell at 80. That is what it really meant.

THE COURT: You mean put the market up to 80?

THE WITNESS: No, sir, that the package would be so attractive that the market itself would get to 80, or go above, through the arbitrage transactions. In other words, when you make an offer there is an arbitrage market that develops and the underlying security or the security to be exchanged, Piper, would sell at or very close to 80 because the package was really worth 80.

Q Doesn't the press release say that it will be the package of the Bangor Punta securities and/or cash that will have a value of $80 in the opinion of First Boston?

A Where is the cash?

Q Excuse me. I withdraw that question.

When it says the Bangor Punta securities will be valued at not less than 80 dollars in the judgment of First Boston Corporation, why did you think that that referred to the Piper securities having a value of $80?

A If you have been in as much situations as I have been in in arbitrage and tenders, you know that if an offer is going to be made and a price is stipulated that the real judgment of that price is the price of the share being purchased, Piper in this case.

Q So you arelooking at it from the standpoint of creating an arbitrage in this market?

A I am looking at it from the standpoint of being a Piper stockholder. I don't think the average Piper stockholder could diagnose -- I don't think in most cases where a complicated formula is offered to the public that they can diagnose or understand these formulae and they look, therefore, to the price of what they have, no matter who creates it, whether it was created by the market or by the arbitragers. This is a complicated package and the average guy is just looking at for what his Piper shares are selling.

Q Is there any mention in this release of what package is going to be offered --

A There was an offer made later.

Q I am talking about May 8th.

A It says a package of Bangor securities to be valued in the judgment of the First Boston Corporation. A package generally means more than one type of security.

Q But you are talking about --

THE COURT: Did they necessarily mean listed securities, where the market expressed a price?

THE WITNESS: Not necessarily, sir.

THE COURT: If it didn't necessarily refer to

listed securities or securities where there was a price, market price, how would you arrive at $80 unless you had a judgment of a banking house as to value?

A Well, those kinds of offerings I don't think are very successful. You are talking about something that is not quotable.

THE COURT: Well, when it says here for a package of Bangor Punta securities, you can't tell what securities they are, whether they are listed or unlisted or marketable or marketed or market-priced securities, can you?

THE WITNESS: No, but one would assume they would be marketable even though they were not listed.

THE COURT: Isn't it because there was no reference to the nature of the securities and whether they were securities on which the market was putting a price that you would read the words "to be valued in the judgment of the First Boston Corporation" as expressing a judgment of what the market could furnish?

THE WITNESS: Oh, yes. Obviously they were going to express a judgment -- that is stated here -- at not less than 80, which means it could be more than 80.

THE COURT: Does it indicate anything at all about putting any stocks up?

THE WITNESS: I would think that would have put

the stock up itself.

THE COURT: We are talking about -- which stocks doyou say would be put up byt this kind of offer?

THE WITNESS: Your Honor, whenever a package offer is made a market does generally develop, over the counter or listed, frequently when issued. So that the share being purchased, offered for, reflects it, and this says that the package is going to be worth not less than $80 per share and as an oldtime guy down on the street I say to me that means I judge that package by Piper, nothing more, nothing less.

THE COURT: In other words, you would ignore the words and go on your hunch?

THE WITNESS: I wouldn't have a hunch at all -- no hunch. Piper stock had a market and that is what I would go on, because until I can get the package, that is the only thing I can really sell.

BY MR. RYAN:

Q How long after the exchange offer closed or how long would the package of Bangor Punta securities have to sell at $80 in order to satisfy your understanding of that statement?

A During the offering?

Q Well, how long? During the offering, after the

offering, from one month after the offering, six months, one year? How long would the package have to sell for $80 in order to satisfy your understanding of that statement?

A Well, in my opinion the testing period would be during the offering, not after the offering, because that is the time when as a stockholder I can either take the offering or, as you pointed out, go to a court action for evaluation and that would depend upon the length of the offering. If the offering is for ten days, I would say that ten market days -- I would say three days would be a proof to me whether the Piper shares sold. If the offering was three weeks, I might want maybe four days, five days, but I would want a reasonable percentage of the days during which the offering was open to prove the point.

Q In other words, it would irrelevant to you as to what the price of Bangor Punta securities sold for which were included in the package? Is that your testimony?

A That is not my testimony, for this reason: If the deal is effective and approved by the stockholders, there is no risk to a firm that arbitrages, and they are the ones that really set the price of, in this case, Piper, and during that period, where there is absolutely no risk,

you get the maximum test.

Q Are you expressing your opinion as an arbitrageur or are you expressing your opinion at what you think a reasonable Piper shareholder would understand that statement to mean?

A I am expressing my opinion as an expert in the securities business, if that is what you

Q Not as an arbitrageur?

A I could say it as an arbitrageur.

Q In that press release it states that there is going to be a registration statement filed.

Did that language have any meaning to you?

A Yes, sure. That means it is going to be filed.

Q And there is going to be a prospectus issued?

A Correct.

Q And that prospectus will describe the terms and conditions of the offer?

A Correct.

Q And that prospectus will be delivered to every Piper shareholder before he exercises his judgment as to whether he will accept the offer or not?

A Correct.

Q That reasonable Piper shareholder getting that prospectus would know exactly what the terms and conditions

of Bangor Punta's offer was to him, is that correct?

A He would know the terms and conditions, yes, that's correct.

Q And he would also be able to learn from his broker, such as one of your associates at Burnham & Company, what the quoted price was of the components of the package of Bangor Punta securities offered to him during the course of the exchange offer?

A If there was a quotation.

Q Well, assume there was a quotation and you could determine what the price was.

A Yes.

Q And if I told you these securities were traded, securities of Bangor Punta were traded during the term of the exchange offer, he could have called your firm and learned what the price was?

A Yes, but I am not sure he could have sold the securities inthe package.

Q Well, it is the restriction of the sale after that disturbs you?

A Well, as understood earlier, the offering was closed before stockholders approval was granted.

Q That's correct.

A So I don't think that too many people would have

Did you say that Mr. Gordon said the Chris-Craft Corporation had absolutely decided to take all of the stock that came in on the tender offer?

A That is my recollection.

Q Absolutely, that they had decided that?

A They would take all they could get.

Q They wanted all they could get?

A That is what they needed the money for.

Q That is then what he told you, they wanted all they could get?

A Yes, sir.

Q You do recognize, don't you, Mr. Burnham, that value can sometimes have a meaning different than the last quotation on the New York Stock Exchange?

A That is the best indication of value to me, what something sells for, in the securities business.

Q Were you in Wall Street the afternoon that President Kennedy was assassinated?

A Yes.

Q Do you recall what happened to the market?

A Yes.

Q Would you tell me the last quotation that afternoon for Ford Motor Company was the value for that stock?

A It was that day.

* * *

might be worth two years from now or a year from now, six months from now --

Q That is not part of my question. Please answer my question. I want to know the value of a security this afternoon that is not traded anywhere.

A Not traded anywhere?

Q Yes.

A That is something different.

Q That is my question. Would you attempt to answer it, please.

A You could express an opinion of the value of a security that has no market. Then you are practically doing an appraisal. You have to do a great deal of study, research, judge the competitive position of the company and come up with what you think is a fair value. You have no market to go by. You have comparative securities, possibly.

Q And you arrive at a judgment as to what that value is on thatday?

A Yes.

Q Very well.

Do you know whether your firm participated in an underwriting of Sherwood Medical Company by Brunswick?

A We may have.

Q Do you recall whether there were any assurances given that they would never merge Sherwood into Brunswick?

A I don't remember anything about it.

Q Did you ever consider asking for that assurance?

A I don't remember whether we were in it. Who was the managing underwriter?

Q First Boston -- excuse me. That one was Lehman Brothers.

A I don't have any recollection whether we were or not or had any knowledge of this company.

Q Did you participate in the underwriting of Cox Cable Communications by Cox Broadcasting within the last two years?

A We may have.

Q Were any assurances requested of Cox Broadcasting that they would never merge Cox Cable?

A Into Cox Broadcasting?

Q Yes.

A Well, if my recollection is correct, they must own 80 per cent of it, or something. I believe they own the whole thing. They created it.

THE COURT: What is the answer to the question? Read the question.

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A Were any assurances given?

Q Yes, that were there 80 per cent they would not merger Cox Cable into Cox Broadcasting.

A I would doubt it, because I would presume it was just coming out of Cox Broadcasting.

Q Did you participate in any of the secondary offers by LTV of their various subsidiaries?

A Yes.

Q Were anyassurances requested that they would not merge these companies either with each other or into LTV?

A I very much doubt it. I think in practically every case they were wholly owned subsidiaries at the time that the spin-offs were made. That was a corporate policy of LTV, if I remember.

Q Your testimony earlier was you couldn't market that kind of security under those circumstances because the man would not know if, for example, in Brunswick-Sharwood, whether he was buying stock in a medical instrument company or a bowling company.

A I don't agree with that. I know what you are getting at an I think when a parent who owns 100 per cent decides to start a market in a small portion of what it owns, either to get money or to create a market so it

could go for acquisitions, the buyer in that case is very pleased that the parent owns 80 per cent, and in each of those cases you are distributing to the public and they probably like the fact that 80 per cent is held by the parent.

Q Why should they like that and not like the fact that Bangor Punta owns 51 per cent of Piper Aircraft?

A It is just a different situation.

Q What is different about it?

A Because there is a disagreement over management.

Q That disagreement ends the moment Chris-Craft markets their stock, doesn't it? It eliminates the uncomfortable partnership situation?

A In most of the spin-offs -- Brinks is a very recent case, that came out of Pittston -- they have had the second distribution --

Q And very successfully too?

A Yes. In most of those cases they have been controlled by the parent for a long time and the public feels more comfortable that it has a parent that understands its business and that is getting into something he couldn't get into in this type of case, in my opinion. I am just giving you my opinion. Neither Chris-Craft nor Bangor Punta had ever been in this business before.

THE COURT: Does the public really ever have an opinion or is it the opinion of a bunch of brokers down on Wall Street?

THE WITNESS: Your Honor, I think the public very frequently has an opinion.

Q On the matter of the assurances or undertaking you said you would require, I believe you said it would have to be that they would never merge.

Do you recall mean to press it quite that far?

A Well, I wasn't called in to be the investment banker of Chris-Craft or Bangor in this case, but at the time, if you recall, there was considerable public question about the management capabilities of conglomerate companies, and even investigations suggested in Congress, and lots of people had serious question about that matter and in this particular case we said if we were going to market Piper, we would want to be sure they were going to be in the personal aircraft business, period, and not involved in something else. That is Burnham & Company.

Q This is Burnham & Company's view of the management of Bangor Punta? Is that what you are telling me?

A No. We as a firm followed the personal aircraft business for many years and I have flown most of the planes of these manufacturers and it is a different ballgame and

it requires a certain type of management and you would want to be pretty damn sure about the continuity of that management and that they are happy. These are the important things.

Q I am not certain if you answered my original question.

Did you really mean never? Can you answer that?

A Never is a tremendously long thing. Certainly for a long foreseeable period of time.

Q A reasonable period of time?

A Well, I think we are mincing words. I don't know. We were not offered the problem. I would think I would want to sell the stock of Piper, if I was selling it, as a personal aircraft business that was going to be continued to be run by a management that was not going to be interfered with and that is what my client is buying, not something else that might be lurking in the corner.

THE COURT: Were both of the contenders for control here conglomerates?

THE WITNESS: Yes, I would call them relatively conglomerates.

THE COURT: Chris-Craft was a conglomerate and Bangor Punta was a conglomerate, is that right?

THE WITNESS: I would think they were. I would

an assurance to the public of good management.

Q In your meeting with Mr. Gordon on raising these funds, on Friday morning, can you tell me why you felt it necessary to go to London rather than going across the street to some financial institution in New York which wouldbe handier to deal with?

A Well, London is a very good market for this type of money, that has much fewer restrictions -- I mean, Mr. Gordon wouldn't have had to come to me if he could have gotten that money from a commercial bank in New York. Obviously he couldn't do it right away with his own investment bankers, or he wouldn't have come to me. As I have said, I don't see that the commercial banks would have made this kind of loan. At that time they were not so interested in getting extra things, but in London there is a great deal of this kind of money and it can move very fast.

Q Can you tell me what you mean by "this kind of money"?

A Money that is loaned to corporations for short term where there is something sought more than just an interest rate, in other words, warrants, stock. These are handled by merchant banks, many of whom have very substantial discretionary funds, Eurodollars --

Q A fast turnover and a kicker?

A That's right.

Q In other words, you knew when he came to you this was a very difficult kind of financing, not a simple --

A I didn't think it was so difficult. That is why I told him we would have hit for him Monday. I thought it was rather interesting.

Q Did you talk to Loeb, Rhoades about why they couldn't do it?

A No.

Q Did he tell you about their inability to do it?

A I don't know that Loeb, Rhoades couldn't do it.

Q You are just inferring from the fact he came to you that they must have said they couldn't do it?

A I assumed there must be some reason he would come to us, but I ddidn't know what it was.

Q That was not a subject of discussion between you and Mr. Gordon at that time?

A Not that I recall.

Q Did Mr. Gordon say they wanted the kind of money where there was not going to be any restrictions or debt tests or net tangible assets tests, the kind of things a United States lender would require?

A No. He just wanted us to get the money and

what the terms would be and he knew it would be relatively short term and, as I pointed out, the maximum in this was two years.

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Q There is an element in this market, in connection with this kind of money, that not too many questions are asked, along the lines of the Judge's questions, earlier?

A Well, I think the judgment of some of these foreign lenders is based upon what they know historically about some of these companies, and they have a certain amount of confidence that a company that's been in business as many years as Chris-Craft would be able to take care of a two-year obligation without too many restrictive covenants. But, as I agree with the Judge, that I'm sure they would have come back and wanted updated financials and what was available to them. But I'm rather inclined to think that they would not have asked for anything unreasonable. I think that their protection was the length of extension of credit. That was the main protection they were seeking.

Q Is there a tendency in that market and with this type of money, this kind of money, as you phrased it, to accept an old name without too many questions, as in the marketing of Penn Central Transportation notes, in that market, shortly before the bankruptcy?

A Well, I don't have much to do with Penn Central, so --

Q Are you familiar with the fact that they did borrow money in the Euro-dollar market?

A Well, I'm sure they got a lot of it because their name was Penn Central. But there was a business judgment, and business ju-gment means a lot. A corporation as historically having a certain strength, and you start from there. I mean, after all, they are fairly well known, a company that's listed on the New York Stock Exchange. The material is available. You start right off there that they have to have a certain financial position.

Q You say the name of Chris-Craft was well known; is that correct? Wasn't that your testimony?

A Yes; sure, it was. I think that Loeb-Rhoades had sold it -- I don't know the date -- but I imagine their convertible debentures had been sold prior to that time, 25,000,000 convertible debentures, which they sold with no great difficulty, which would have been subordinate to this special credit.

Q In your discussion with Singer & Friedlander, did you get across to them or did they say anything which led you to believe that they knew the nature of Chris-Craft had changed within the past couple of years?

A My partner had those discussions, but Francis Hock, who is a senior partner of Singer & Friedlander, came to see me in New York some time before and outlined to me roughly the type of company that they were willing to

make these types of loans to. They were principally interested in companies listed on the New York Stock Exchange, No. 1, and companies that had a national name and a certain size, a certain standing. Otherwise, they really didn't want to discuss it. And then thats where they felt that they would get the best play out of their warrants.

MR. ARNING: Could I have the answer repeated?

THE COURT: Read the question and the answer.

(Record read.)

Q Do I understand from that that the answer to the question is that you don't know, because you didn't participate in the conversation, what was said? Is that correct?

A I don't know what was said between them, but Chris-Craft met; Mr. Woudhuysen and I discussed whom it would go to, and we knew that Chris-Craft was the type of company that would meet his general -- that he would know about --

Q The type of company. All you said, it was listed on the New York Stock Exchange. Was that the only criterion?

A I said it had a national standing, a national name. Chris-Craft has an international name.

Q The boats have an international name.

A The company has an international name. Primarily the boats, yes.

MR. ARNING: Could I have a moment, your Honor?

Q Just one last question, Mr. Burnham: did Mr. Gordon in his conversation to you give you a date by which they needed the cash in hand? Not just a commitment, but cash in hand?

A I don't recall that he did. He really wanted to know, can we get it and promptly?

Q How promptly? I am sure you must have --

A Very promptly.

Q A week? Monday?

A I don't remember. He did -- I think I said to him, "We will give you an answer Monday or Tuesday."

Q Well, an answer is not the cash in hand. What about cash in hand? Did you discuss that?

A No, because at that time I don't recall that we discussed it or that my partner discussed it, because they did not seem disposed to actually take it.

Q This was just --

A They wanted to know whether they could get it.

Q Just checking whether it is available?

A We gave them an answer that they could get it and roughly the terms.

Q But without a closing date? That was not one of the terms?

***

CHARLES LEONARD GORDON,

called as a witness by the plaintiff Chris-Craft Industries, after having been first duly sworn, testified as follows:

THE WITNESS: Known as Leonard.

THE CLERK: Where do you reside?

THE WITNESS: 15 West 81st Street, in New York City.

DIRECT EXAMINATION

BY MR. LIMAN:

Q You have testified thatyou are known as Leonard?

A Yes.

Q What is your age?

A I am 41.

Q Your educational background?

A I am a graduate of Harvard College. I attended Harvard Law School, and I am a graduate of NYU Law School.

Q State briefly your career since law school. When did you graduate?

A 1955 or '56. I was a night student and there is some question exactly when.

And I then became an associate at Cravath,

Swain & Moore, where I remained until 1960.

I then became an associate at Delson & Gordon, where I was for six months.

I then became an associate at Marshall, Bratter, Greene, Allison & Tucker.

Subsequently I became a partner at Marshall, Bratter.

Q Did you have a specialty in the practice of law?

A Yes. My specialty was corporate law and securities.

Q And after Marshall, Bratter?

A After Marshall, Bratter I became vice president and general counsel of Baldwin, Montrose, a chemical company.

Q And when was that?

A June of 1964.

Q And did Baldwin, Monrose subsequently merge with Chris-Craft?

A Yes.

Q And when was that?

A In 1968, June of 1968.

Q And what positions did you hold with Chris-Craft?

A I am vice president and general counsel of Chris-Craft. I was also secretary of Baldwin, Monrose. I am not at Chris-Craft.

Q Where did you make your office at Chris-Craft?

A 600 Madison Avenue.

Q And to whom do you report at Chris-Craft?

A I report to Herbert Siegel, the chairman of the board, and the board of directors.

Q Now can you tell me, Mr. Gordon, did Chris-Craft in 1968 have a policy with respect to investments in other companies?

A Yes, it did.

Q And would you state briefly what that policy was?

A We had a policy of expanding our business by acquisition of other companies, with a particular emphasis on companies engaged in businesses related to leisure time activities.

Q As of December 30, 1968, before Chris-Craft purchased any Piper stock, did you have investments in other companies?

A Yes.

Q What companies?

A We had investments in Harley-Davidson, Motorcycle Company, which we sold.

We had an investment in Warner Bros. and in Metro-Goldwyn-Mayer.

We had an investment in -- well, as a predecessor of Chris-Craft, Baldwin, Montrose had an interest in Paramount Pictures.

Q And prior to December 30, 1968, had Chris-Craft given consideration to acquiring any interest in companies in the light aircraft business?

A No.

Q Now had you had any discussions with any companies in the light aircraft business?

A Yes. We had a discussion in, I think, 1967, with -- maybe '68, with the Ted Smith Airplane Company, with a view to acquiring it.

Q And had you had discussions with respect to acquiring stock in other aircraft companies?

A Yes. We had discussions about the light aircraft business in general, as a leisure-time related business, and we discussed Beech Aircraft in particular.

Q When you say "we," whom at Chris-Craft are you talking about?

A Particularly Herbert Siegel, Jim Rocklis, and myself.

Q For the record, would you identify each of these individuals and what his position and role was at Chris-Craft?

A Yes.

Herb Siegel is the chairman of the board and the president and the principal executive officer.

Jim Rocklis is executive vice president and president of the boat division.

Q Jim Rocklis?

A James J. Rocklis.

Q Did Chris-Craft have an investment committee at that time?

A Yes, we did.

Q Who served on it?

A Herbert Siegel, Virgil Sherill,-- Virgil Sherill is the senior partner of Shields & Co. -- and Jim Rocklis.

Q Was Mr. Sherill on your board of directors?

A Yes. Mr. Sherill was a director.

Q Now when, Mr. Gordon, did you first learn that Chris-Craft had purchased any Piper stock?

A December 30th, at or about the time that we first purchased Piper stock.

Q And how did you learn of it?

A Herb Siegel told me that he was purchasing or had purchased -- I don't remember exactly when I learned it -- I think the very day that he purchased the stock -- that he was purchasing 5000 or so shares for Chris-Craft.

Q Was there any discussion with respect to what your intention was in this investment, what Chris-Craft's intention was?

A That it was an interesting company and we would take a small -- these shares, and have a look-see and that there might be some more available.

Q Were you kept informed of Chris-Craft's other purchases of Piper over the New York Stock Exchange between January 3 and January 21?

A Generally, yes.

THE COURT: This is in 1969?

MR. LIMAN: '69, your Honor. And these are detailed in one of the uncontested findings of purchases, your Honor.

Q How were you kept informed?

A Herb Siegel would tell me what the purchases were.

Q And did you have discussions with Mr. Siegel or any other officer of Chris-Craft at the time the purchases were being made?

A Yes.

Q Did you discuss Piper?

A We discussed Piper.

Q Did there come a time when you were present at a discussion of the possibility of seeking control of Piper?

A Yes.

Q Can you tell me when that was and what the occasion was?

A Well, there had been some general conversations in mid-January. As the stock came in very quickly, a substantial number of shares were purchased without disturbing the price of the stock, and I think the first serious conversation about acquiring control was on the -- on December -- on January 21st.

Q And what was the occasion of that discussion?

A Herb Siegel told me, either during the day or as we were leaving, that the following day a man from a fund, Technical Fund, was coming in to see him and that the man had 100,000 shares of Piper stock; the Fund had 100,000 shares of Piper stock, and he might be willing to sell them.

Q You say Technical Fund. If I tell you that the name of the Fund was Technology Fund, would that

refresh your recollection?

A . Pardon me, yes. Technology Fund, yes.

Q Was that the totality of the discussion with Mr. Siegel on the subject?

A No. We discussed what would happen if we were to buy those shares, because that would take us over ten per cent of Piper, and we would have to announce that we were shareholders of Piper under 16(a), which we would have to file, and the Piper annual meeting was coming up on February 3rd, and we would have to spend at least an extra year until February 3rd, 1970, until their next annual meeting, having an announced minority position in the company without any opportunity to be represented on the board of Piper.

And it was left that we would talk to the -- to Mr. -- it was Mr. Hawkinson.

I didn't know his name at that time.

We would talk to the man from the Technology Fund and that it was unlikely that we would want to purchase the stock because of this problem.

Q Had you sought proxies on any of the other shares that Chris-Craft had purchased prior to January 21st?

A No, we had not.

Q Now had you done anything on or before January 21st to familiarize yourself with Piper as a company?

A Yes, I had.

Q And what had you done?

A I had read the annual report for the previous three, four or five years -- I don't remember which, but certainly three years.

I had obtained all of the information on file at the New York Stock Exchange, the 10-K's, 9-K's, 8-K's, the form of senior debt agreement, Forms 3 and Forms 4, bylaws and certificate of incorporation.

Q And when had you obtained these documents?

A In mid-January. I hadn't looked at them all until about the 20th or the 21st, but I had been obtaining them. I asked that they obtain them for me.

THE COURT: How many shares did you own, approximately, by the 21st of January?

THE WITNESS: Approximately 100,000 shares.

Q And can you tell the Court approximately what your investment was in those shares, the 100,000?

A Our average price --

Q Yes.

A -- was about $57 a share.

Q Was it $50 a share?

MR. LIMAN: Do we have a stipulated figure? We have a chart.

Q It was over $5 million?

A Over $5 million.

MR. LIMAN: At the recess I am going to mark the annual reports. I don't want to take the Court's time and have them identified now.

Q Did you have any discussion with any of the executives of Chris-Craft concerning the material that was contained in the annual reports and other documents you saw.

A Yes. We had a number of discussions.

Q Can you recall them and when they were and with whom they were?

A During January I had discussions with Herb Siegel, with Jim Rochlis, and we discussed at first the investment in Piper itself, as it was developing. I know I had been surprised that Herb was interested in Piper; he had always been interested in Beech, and we discussed the business of Piper generally. I particularly discussed later in January that Piper had cumulative voting, the number of shares to elect a director, and that sort of thing.

Q What was said on the subject matter of the business of Piper?

A Well, it was felt that Piper's business had lagged behind Beech and Cessna but that they were moving into the more lucrative business airplane market now. They had come out with the Navajo Twin, which was a major entry

into the business plans, and they were coming out with the Pocono and that they were putting themselves into a posture to compete with Beech slowly but they were moving there.

Q How were things left on the 21st with respect to Piper at Chris-Craft?

A That we would meet with Mr. Hawkinson the next day, but at least for myself I was very dubious about the desirability of buying the 100,000 shares.

Q Did Mr. Siegel express a view on the 21st?

A I am not sure whether I am mirroring my own reactions or his when I say we were dubious. I think he was dubious too.

Q On the 22nd, can you relate the events of January 22nd, 1969?

A Yes. As I was walking to work, I walk through Central Park, I was thinking about the conversation we had had the day before and the fact that we would have to wait the extra year before we would have any representation on the board and then it occurred to me that we would probably be able to get the proxy from the Technology Fund if we were to purchase their stock, that we may be able to get enough on the proxies from the shareholders whose shares we had already purchased and that we could also

tender for shares with proxies attached and the whole time schedule could be changed by a full year. I called Herb Siegel at his home, from a phone, to tell him of this and he raised some questions about it and said he would think about it.

Q After you arrived at your office did you do anything further with respect to Piper?

A Yes. I called Mr. Siegel and we discussed the matter further and at that point concluded that we might be willing to -- if we could purchase the shares of the Technology Fund that it would be desirable then to tender for additional shares of Piper and that we could acquire control of Piper on the spot, without waiting a full year of being in an intermediate position.

There was a lawyer at my office waiting for me -- we had been actually much more seriously interested in Warner Bros. and there was a lawyer from C. Kravath at my office to discuss Warner Bros. that morning and I told Mr. Siegel that if we were to buy the shares, at our meeting with Mr. Hawkinson we would have to start the machinery running now -- the time was very tight and the meeting of Piper was coming February 3rd or 4th and there were requirements as to how long we had to hold our tender offer open, if we were to make one, under the new Williams Act,

that we would have to start the lawyers moving right away if we were going to make the offer in time, and it was very fortunate that Mel Bedrick was there, who is a partner at Cravath, and I was authorized to spend the money with the lawyers to get some preliminary work done at that time.

Q When didyou first ask your counsel -- I take it Cravath was your corporate counsel?

A Yes.

Q When did you first ask them to start preparing for a tender offer?

A That morning.

Q Did you meet that day with Mr. Hawkinson?

A Yes.

Q Who was present?

A Herbert Siegel, Mr. Hawkinson, Roger Spencer, of Mitchell, Hutchins, and there was somebody else there whose name I don't know, and myself.

Q Did the meeting take place at your office?

A No, at the office of Chris-Craft, in Mr. Siegel's office.

Q That is adjacent to yours, isn't it?

A Two over.

Q Who is Mitchell, Hutchins?

A A broker.

Q Were they a broker through whom you had purchased Piper stock on the New York Stock Exchange?

A Yes.

Q What happened at the meeting with Mr. Hawkinson?

A When I arrived at the meeting it had just started and Mr. Siegel was telling them about Chris-Craft and about our leisure time concept, and that led into the light aircraft business and into the 100,000 shares of Piper Aircraft that Technology Fund owned.

Q Was there a discussion about Piper with Mr. Hawkinson?

A Yes, there was.

Q In substance, what happened in that discussion? What was it about?

A There was a discussion about our buying Mr. Hawkinson's stock, and we offered him $60 a share and I think he said he wasn't interested, and then we offered him what I called the most-favored-nation clause, that is, if we were to tender for additional shares at a higher price we would give him the difference between $60 and the higher price when and if we made such a tender, and he said he wouldn't be interested in that, that we wouldn't be buying his shares unless we were going to buy the balance and we would

have to pay $65 a share to get control and that is what we would have to pay him to get his shares and that would be all he would be interested in.

Q Do you remember what the market price of Piper was on the New York Stock Exchange then?

A Around 57, or lower than that -- I am not sure -- no, it was 52, I think, at that point.

Q What didyou say? Did you agree to buy his shares?

A Yes. In the morning we had called our directors to get a feel as to what the reaction of the board would be, to sound them out, what they would do if he had agreed to sell. So I was pretty sure I was in a position to agree to buy his stock. It was subject toour confirming with our board of directors but I told him that I had pretty well sounded them out and we were going to get that approval.

Q Incidentally, you mentioned Mr. Sherill was on the board.

Was there any other investment banker on your board of directors?

A Yes, Armond Erpf, of Loeb, Rhoades was a director.

Q Who were the investment bankers of Chris Craft at that time?

A Loeb, Rhoades and Shields.

Q What happened after Mr. Hawkinson was told that Chris-Craft would buy his stock?

A I started drafting the documents.

Q For the purchase of his stock?

A Yes, and also for the tender offer. We were working on those documents too.

Q When was it decided to make a tender offer?

A At the same time that we decided to buy his stock.

Q Did you consult your directors on that subject?

A Yes, we did.

Q Who consulted the directors?

A I think Jim Rochlis made some of the calls, Herb Siegel made some of the calls, I made some -- I made fewer because I was busy with the documents.

Q Was there a discussion of the terms of the tender offer to be made?

A Yes.

Q Was there discussion of the number of shares for which you should tender?

A That was one of the major items of discussion.

Q With whom?

A Jim Rochlis, Herb Siegel, Virgil Sherill, Armond

Erpf.

Q Did you participate in these discussions?

A Yes.

Q What was said on the number of shares to be tendered for?

A Well, I said the object was to get control, which was, I think, 620,000 shares. We had 200,000 and 620 more would give us control, and Mr. Siegel said that the best way to get the 620 was not to put that number in the tender offer because people would be discouraged if the number was too high, people would be discouranged from tendering.

I think I then suggested 500,000 shares, all or nothing.

Q What do you mean by all or nothing?

A That either we would get 500 shares or we wouldn't take any. Both Mr. Rochlis and Mr. Siegel -- Mr. Rochlis in particular, who had had experience with this -- said that people didn't like to tender into tender offers unless they knew their shares were going to be accepted and they didn't want an unknown situation, an unspecified situation, where theywould tender and they wouldn't know that their shares would be accepted, that all or nothing was very devastating to a tender offer.

Mr. Siegel suggested 300,000, with no minimum, and we walked with Mr. Sherill and with Mr. Erpf on the phone about it and the 300,000 with no minimum was the number that ultimately prevailed.

Q Was there discussion of the right of overage?

A Yes -- there was never any discussion over it because the main object was to get to 620. Right of overage was crucial to it. We didn't discuss it, it was settled at the beginning.

Q Was there a discussion of the price at which you should tender?

A Yes.

Q What was said on that?

A $65 was the price necessary to go to to get Technology Fund, and that was theprice that was determined on.

Q For the tender offer?

A That was the price that we felt would be necessary to get control of Piper.

Q Was there discussion of how you would finance your purchases pursuant to the tender offer? This is on the 22nd.

A Yes.

Q What was said on that subject?

A Well, I was under the impression, and I think it was correct at that time, that we had enough funds without --

THE COURT: Are you answering a question about what was said or in reference to your impressions?

THE WITNESS: I was, but I shouldn't.

THE COURT: Please answer the questions.

Q Was there any statement of what funds were available for the tender offer?

A Yes.

Q With whom was the discussion?

A With Herb Siegel and Virgil Sherill.

Q Was this on the 22nd?

A Yes.

Q Did you participate in the discussion?

A Yes, I did.

Q What was said on that subject?

A I said that it would be easier from the financing point of view -- I said we had not yet arranged for financing for shares beyond 300,000 in the tender offer, that we would have to disclose in the tender offer -- if we were to go for 500,000 shares then we would have to disclose the fact that we had not yet arranged for financing and that that was a minor point to argue for the 300,000 shares rather

than the 500,000 shares.

Q You say you had arranged for the financing for 300,000 shares.

What arrangements had been made?

A We had $10 million in excess funds at that point in time and we had just raised $25 million in a convertible debenture offering and we had expectations of borrowing bank monies if we should need additional funds in our business. It was January, which is the time you begin to build inventory for the boat business.

MR. LIMAN: If we can break here, your Honor, it is one o'clock.

THE COURT: Could we finish just what the talk was on January 22nd?

Q Was there further discussion on the subject of financing on the 22nd?

A I can't think of any that I have not covered.

THE COURT: So the only person who spoke was you?

THE WITNESS: The only person whose conversations I remember vividly I am afraid are my own. Mr. Siegel said if any additional monies were needed he would raise it from Philadelphia National Bank, he was sure.

Q Did he tell you he had made arrangements to raise

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it with the Philadelphia National Bank?

MR. PENNOYER: Objection.

THE COURT: What was said?

A He told me that he had talked with Bob Potts about how much additional money -- Bob Potts is the executive vice president of the Philadelphia National Bank -- that he had talked with Bob Potts about how much money wecould expect to borrow from the Philadelphia National Bank in the event we were to acquire a very large company with the proceeds of our convertible debenture offering and with the other cash -- how much money we could expect to borrow from the Philadelphia National Bank, and Bob Potts told him that our balance sheet and earnings would justify $15 million of bank borrowing.

Q Was there discussion of whether the 15 million was necessary for 300,000 shares?

A None whatsoever.

THE COURT: Have you now given the complete discussion as you recall it?

A Are you referring to the discussion between Potts and Siegel earlier?

Q No. I was referring to the discussion on the 22nd.

A Oh, not that I participated in.

Q You did not participate in the discussion between Mr. Siegel and Mr. Potts earlier?

A No.

Q Have you now given the Court your recollection ofall of the discussions on the 22nd with respect to the terms of your tender offer?

A I think Herb Siegel may have said -- I am sure he said he wanted to call Bob Potts and tell him we were going to make a tender offer.

Q He said that on the 22nd also?

A Yes.

Q And when was that, before or after you met with Technology Fund?

A After we met with Technology.

THE COURT: Is there anything else that was said about financing the shares either as to the first 300,000 shares or any contemplated addition, on the 22nd?

THE WITNESS: No.

THE COURT: All right, we will break for lunch. 2:15.

(Adjourned to 2:15 p.m.)

AFTERNOON SESSION

2.15 P.M.

MR. LIMAN: During the recess, your Honor, we marked as Exhibit 29 for identification copies of Piper's annual reports as filed with the SEC from 1958 through 1970. I should state that the expert testimony is based in part on these reports and I am marking them for identification as a group now and we have turned over during the recess the tables that our expert prepared, including tables from these documents.

That is Exhibit 29 for identification.

Exhibit 30 for identification is a draft dated 1/22/69, of a tender offer. Exhibit 31 for identification is a draft of the same date, 1/22/69, of a letter of transmittal.

Exhibit 32 for identification is a marked-up schedule 13-D.

Exhibit 33 for identification is the tender offer for Piper.

Exhibit 34 for identification is the schedule 13-D filed on Piper.

(Plaintiff's Exhibits 29 through 34 marked for identification.)

C. LEONARD GORDON, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. LIMAN:

Q Mr. Gordon, would you look at these exhibits (handing). Can you identify Exhibits 30, 31 and 32, please?

A Yes. They are drafts of the offer to purchase, first draft of the offer to purchase shares of common stock of Piper Aircraft Corporation, drafted January 22, 1969, prepared by Cravath, with the numbers blank and the price blank.

THE COURT: I would like to ask some lawyer for the defendants to explain to me what issue is involved in connection with these drafts, if any.

MR. PENNOYER: Your Honor, I don't understand why Mr. Liman is offering them. They may well become the subject of cross-examination in view of certain testimony this morning, but I would oppose their admission at this time.

MR. LIMAN: Your Honor, I don't think that the question has been answered. They have proposed as a contested finding that Chris-Craft prepared its tender offer some time prior to the 22nd and submitted it to the advertising agency prior thereto.

THE COURT: Why do you have to prove the opposite

of that?

MR. LIMAN: I don't intend to cover 99 per cent of their claims, your Honor, but it seems to me it is just as easy to cover this one right now and get it out of the case.

THE COURT: It doesn't get it out of the case, it gets it into the case by putting it that way and I am not sure it doesn't get us into something totally irrelevant and immaterial --

MR. LIMAN: I would agree it is totally irrelevant and immaterial --

THE COURT: Then if it is totally irrelevant and immaterial, the objection is sustained at this time.

BY MR. LIMAN:

Q Mr. Gordon, would you tell me what happened on January 22, 1969, with respect to Piper?

A We made a tender offer for Piper Aircraft common stock.

Q When was that announced?

A It was announced in the morning.

Q Of the 23rd?

A Of the 23rd.

Q Did there come a time when you met with a representative of Piper?

A Yes, on the 24th.

Q When was that?

A On the 24th.

Q Where was the meeting?

A At the office of LoebRhoades & Company.

Q Was the meeting arranged at somebody's request?

A Yes. We asked ---

Q At whose request?

A Chris-Craft.

Q Who was present at the meeting?

A William Piper, Jr., the president of Piper Aircraft and Charles Poole, the treasurer of Piper Aircraft, Paul Miller of First Boston, Armond Erpf of Loeb Rhoades, Herbert Siegel and myself.

Q What happened?

A Mr. Siegel and I arrived at the meeting after it had been going on for about five or six minutes -- we were waiting outside -- and we were introduced to Mr. Piper and Mr. Poole and Mr. Siegel was asked to tell Piper something about Chris-Craft. He started telling about our company and Mr. -- I think it was Mr. Miller who said they had heard all of that from Mr. Erpf and they asked us how many shares we had, and we told them we had 200,000 shares, and he said that we had a tender offer for additional shares, that it

might be successful, it might not, and that if we were successful in acquiring more shares and they were unsuccessful in merging away, which they were trying to do, they would be looking for other partners -- if we were successful in getting our shares and they were unsuccessful in merging away, that would be the time to meet and that the time was not now, and I think I gave them tickets to the boat show that was in session then and we said goodbye.

Q Did there come a time when you took steps to arrange some additional financing in connection with your tender offer?

A Yes.

MR. PENNOYER: Your Honor, I object to the leading.

THE COURT: Overruled.

Q When was that?

A There were two things -- there were two steps, and one was taken shortly after the offer was commenced and the other was taken on the 29th.

Q What were the steps?

A One step was to arrange for $15,000,000 of bank financing from the Philadelphia National Bank, and Herbert Siegel was in charge of that. The other was to arrange for additional financing to purchase excess shares over

the 300,000 shares.

I called I.W. Burnham, of Burnham & Company, on the 29th, I believe it was, or the 28th -- I don't recall exactly now -- and told him that I was concerned that we would have the control of the company tendered to us, now that I could see the price of Piper was low, and that I wanted to take all the shares that we could get and wanted to arrange the financing with him, and I went down to his office and met with him and Drees Woudhuysen.

Q And what happened?

A First I met with Drees and with Tubby and we talked about the tender offer and what Chris-Craft was proposing to do and they said they thought they could get us the money and they arranged for it over the weekend.

THE COURT: What did you tell them Chris-Craft was proposing to do?

THE WITNESS: I told them we were proposing to get control of Piper Aircraft.

Q Did you discuss with them how much money you needed?

A Yes.

Q What did you ask for?

A $22,000,000.

Q How did you arrive at that sum?

A It was the difference between -- it is $65 a share times the difference -- 500 to a majority. It was 820-some-thousand shares. I think it was 320,000 shares times $65.

Q You asked them to arrange this financing and what did they say?

A They said they thought they could do it.

Q Did they report back to you?

A Yes.

Q Who did?

A Drees Woudhuysen called me on Mon-ay.

Q What did he say?

A He said that he could arrange the financing -- that he had arranged the financing.

Q Did he discuss terms with you?

A Yes. They were very favorable.

Q Did you ever make -- what were the terms?

A I think it was 7 per cent interest and warrant coverage of, I think it was, only 22,000 warrant shares, and the term of the loan would be -- I think it was to a maximum of 24 months. I said I wanted three years but I think he had 24 months.

Q Did you ever enter into that loan?

A No.

Q Why not?

A Because the excess shares were not tendered to us.

Q When did your tender offer close?

A February 3.

Q How many shares did you get --- roughly, 305,000?

A Yes.

Q And you took them all?

A We took them all.

Q Did there come a time during the period that your tender offer was open that you heard the name Grumman?

A Yes.

Q When, and what happened?

A On January 29 it came across the Dow Jones ticker tape that Piper Aircraft had entered into an agreement with Grumman Aircraft to sell to Grumman 300,000 shares at $65 a share.

Q Did that announcement become a subject of any discussion at Chris-Craft?

A Yes.

Q State what the discussion was and with whom it was.

A There were numerous discussions between Herb Siegel and Jim Rechlis and myself, Virgil Sherill and Armond Erpf, and I think the board meeting, as a board -- it might have been before the board meeting or after the board meeting --

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about the Grumman contract.

I told the board, the directors, that under the terms of our offer this gave us the right to terminate our offer. Our offer stated that if there was a proposed change in the capitalization of Grumman we would have the right to terminate our offer.

Q I think you misspoke. You said proposed change in the capitalization of Grumman.

A I did misspeak. If there was a proposed change in the capitalization of Piper, we had the right to terminate our tender offer, and I advised them that we would have to consider that.

I also told them there was great concern by all of us that this was going to interfere with our tender offer and make it unsuccessful. I know I in particular thought this wasn't such an unfavorable development from one aspect, because this was an insurance policy: Grumman was an insider in the airplane industry and they were ready to pay $65 a share and the price we picked apparently was right and they wouldn't have entered into this, I didn't think, unless they were prepared to take us out.

Q You are giving us your thoughts --

A No, this was the subject of discussion.

Q Did you ever take any steps to stop the Grumman

transaction? 1204 A

A Yes.

Q What?

A We brought an antitrust action against Grumman.

MR. LIMAN: The Grumman press release, your Honor, is finding 37, and I will direct your attention --

Q Mr. Gordon, did you make a decision to proceed with your tender offer notwithstanding the Grumman announcement?

A Yes. At the first meeting we decided to defer that decision and then we finally made that decision the evening our tender offer expired.

Q Did you obtain a copy of the Grumman agreement at that time?

A No.

Q Did you make any efforts thenor subsequently to get a copy of it?

A Yes. We tried to get it in the antitrust action. We asked for it, searched the files of the Commission, of the SEC, and the Stock Exchange, but I never got a copy of that until I became a director.

Q Of Piper?

A Right, in March.

Q When was that?

A In March -- some time after March.

Q I will show you Finding 40, which is an uncontested finding, and direct your attention to (a) and (b) of Finding 40, which summarizes portions of the Grumman agreement, and I will ask you whether or not you were aware of those provisions in the Grumman agreement at the time you decided to go forward with the tender offer, to continue the tender offer?

MR. PENNOYER: Objection.

THE COURT: I will allow him to answer.

A I was not aware of them.

Q Had you known of these provisions, would it have affected your judgment on whether to withdraw the tender offer or conclude it?

MR. PENNOYER: Objection.

THE COURT: Overruled.

A Yes; it would have.

THE COURT: Why?

Q Why?

A Because it indicated to me -- this indicates to me that Grumman, which is an insider in the aircraft business which is being offered Piper control and control of Piper at $65 a share, is unwilling to take it at that price. It would have given me grave pause if I had known that.

THE COURT: It didn't give you pause in buying the first 5000 shares, for any reason?

THE WITNESS: No, sir.

THE COURT: Didn't you make any investigation before as to the type of business you were going into before you committed 1,000,000?

THE WITNESS: Yes.

THE COURT: What was new in this Grumman thing that came out that changed your mind as to your status as a stockholder?

THE WITNESS: We were making a much bigger invest-

ment. We were taking a much larger position.

THE COURT: This is not a matter of hindsight as a result of failure to obtain control?

THE WITNESS: I don't think it is.

Q Why would it affect your judgment that there were these provisions in the contract? I think that is what the Judge is probing you on, Mr. Gordon.

A These provisions in the contract make that contract my interpretation, effectively nothing more than a call on Piper stock, and it would have affected my judgment to know that Grumman was unwilling to make this investment without further serious investigation.

Q To make it perfectly clear --

A Grumman knew this company.

Q To make it perfectly clear, at the time you made the tender offer there was no Grumman agreement; is that correct?

A That's correct.

Q And you are not saying to the Court that you made this investment because you relied on the fact that Grumman was going to make a deal with Piper?

A No.

Q What are you saying?

A I am saying that if I had known these facts about

the Grumman contract at a time when I had the right to terminate my tender offer, I might very well have terminated my tender offer.

Q Now, incidentally, I note here that you used the word "Tubby" when referring to Burnham & Company. Tubby is Mr. I.W. Burnham; is that right?

A That's the name he's almost universally called, for reasons which are no longer true, I think.

Q What did you do on February 4th, the day after you tender offer closed?

A We went to Lockhaven, Pennsylvania, and tried to vote our shares of Piper stock, our proxies, and we met with great resistance. We were not allowed to vote our shares. The shares were impounded and put in a bank -- all of the shares were put in a bank by the independent judges of election of the Corporation Trust.

Q There are stipulated findings on the objections to your voting your shares. Was there any discussion at the annual meeting by Piper of its company, its products, its planes, and so forth?

A Yes.

Q And do you recall what was discussed and by whom?

A Mr. Piper discussed the business of the company in favorable terms. He discussed the Navajo and the

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pressurized Navajo, which was their new product coming on. It was a very important development, because it was --

Q Is that what he said?

A Yes.

Q It's not clear to me whether you are --

A Yes. He said there was an important development, that it was a business airplane. And then Howard Piper, his brother, discussed the Pocono. I think it might have been built; I think it was Howard, though, discussed Pocono, which was the new eighteen-place commuter airplane, which they said was beint tested, and with the introduction they were building a plant in Lakeland, Florida, and the Pocono would be in production next year.

Q Now, did there come a time when Chris-Craft decided to take further steps to increase its investment in Piper?

A Yes. After the annual meeting.

Q And what steps was it decided to take?

A We decided to have an exchange offer for additional shares of Piper.

Q And what do you mean by an exchange offer?

A We would issue shares of Chris-Craft securities in exchange for Piper stock.

Q And who made this decision? Who participated

in making this decision?

A The board of directors of Chris-Craft.

Q And do you recall when, approximately, that took place?

A There was a meeting on February 7th, where we determined to proceed, and then another one on February 15th, where we determinei -- redetermined to proceed.

Q Now, it's a stipulated fact in this case that on the 15th you filed a registration statement upon your exchange offer on February 20, 1969. Who prepared your registration statement?

THE COURT: That is not in the stipulation. In the stipulation it's February 27th.

MR. LIMAN: I thought I said February 27th.

THE WITNESS: No. You said the 20th.

MR. LIMAN: I am sorry.

Q Who prepared your registration statement?

A It was prepared --

Q Was it prepared under your supervision?

A Under my supervision.

Q And was any decision made at that time as to what your package of securities would be?

A No.

Q I will direct your attention to Finding 82(b), which is uncontested, and which is proposed by Piper, and

I direct your attention to the language which appears in your preliminary prospectus as filed and as quoted in Finding 82(b).

A Yes, sir.

Q Did you have any discussion with Mr. Siegel concerning the subject of that part of your prospectus?

A Yes. He asked me whether we could buy stock during the registration period.

Q And what did you tell him?

A I told him in my opinion we could and that I would check with Cravath, and they concurred.

Q Did Chris-Craft, after it announced its exchange offer on February 27th, make any purchases of Piper stock?

A Yes.

Q Do you know how many shares it purchased?

A 9100 shares.

Q And did there come a time when it stopped purchasing?

A Yes.

Q Why was that?

A On April 7th, the SEC informed us of its position, which was that it was not lawful to buy stock.

Q You say the SEC informed you. Where was that?

A At the Commission, in Washington.

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Q And was this a meeting?

A Yes.

Q And what was the occasion of the meeting?

A The Commission called -- called us and told us they were -- they wanted us to come down to a meeting at the Commission. They told us they were calling Piper to come down to a meeting at the same time.

Q What was the status of Piper at that time, Piper stock?

A I don't understand your question.

Q Well, had something happened to Piper stock in the period --

A Oh, yes.

Q -- that period?

A Oh, yes. Piper had just issued a large block of stock to purchase Southply, a plywood company, and U.S. Concrete Pipe, and the Stock Exchange had suspended trading and brought an action for delisting, and I think it was no longer being traded.

Q All right. On the New York Stock Exchange?

A On the New York Stock Exchange.

Q Who was present at the meeting at the SEC?

A There was Herbert Siegel and myself, Sam Butler of Cravath. You were there, and about ten members of the

staff of the Securities and Exchange Commission.

Q And can you tell me what was said with respect to your purchasing of stock of Piper?

A They said that they took the position that we could not buy the stock under Rule 10(b)(6), and if we continued to buy it, if our counsel's opinion turned out to be right, we would be right, and if we were wrong, we would be wilful, which we --

Q What if anything did you say?

A Well, I think Sam Butler at that point --

Q Who is Sam Butler?

A Of Cravath. -- immediately amended his opinion to Mr. Siegel and told him that he better stop buying stock, and Mr. Siegel asked if he could use the telephone right there to pull some orders from the floor, and they said that he could use the telephone downstairs, which he did, later.

Q Was there anything else said on the subject of the purchasing of Piper stock?

A Yes. Mr. Siegel said that he had lived through this once in the Paramount situation, where we were not allowed to buy stock, and the other side was not allowed to buy stock. He asked them first if Piper would be allowed to buy stock, and they said absolutely not; they would be put under prohibition, too. And he said we had lived through

this in the Paramount situation, where he hadn't been allowed to buy stock, and the other side hadn't been allowed to buy stock, and we got third parties to buy the stock, and would any third party be put under this stock injunction, and we were told that Piper would not be able to avoid the stock injunction that way, that this buying had to stop.

Q And after this meeting at the SEC on April 7th and during the period that your exchange offer was open, did Chris-Craft purchase another share of Piper?

A For cash --

Q For cash.

A For cash, no.

Q When you say "for cash," what did it do?

A We went forward with our exchange offer.

Q But you made no purchases outside of your exchange offer?

A None at all.

THE COURT: Did you keep your 9100 shares?

THE WITNESS: Yes.

THE COURT: Did you offer the tender back to anybody?

THE WITNESS: No.

THE COURT: When did Mr. Siegel get the advice in Paramount situation not to buy stock during the tender offer? What was the --

THE WITNESS: In the Paramount situation it was not advice not to buy the stock during a tender offer. It was a stipulation between the parties not to buy stock.

THE COURT: Was that the result of legal advice?

THE WITNESS: Yes, but not a 10(b)(6) situation.

Q What was the circumstance in the Paramount case?

A We were waiting -- we were awaiting trial on an injunction that Paramount was seeking, and the question was whether we would stipulate to an adjournment of the hearing and in order to get an adjournment of the hearing, all parties agreed not to buy stock. That was part of the negotiated stipulation.

Q Did it have anything to do with 10(b)(6)?

A Nothing at all.

Q Mr. Gordon, you said that your practice was in the securities field before you came to Chris-Craft; is that correct?

A Yes.

Q Can you tell me whether or not at this time you were aware of any published interpretation by the SEC that 10(b)(6) applied to purchases of a target company stock?

MR. RYAN: I will object to that question, your Honor.

MR. PENNOYER: I join in that.

THE COURT: You may answer.

A I was not aware --

THE COURT: On the state of the misconception.

A (Continuing) I was not aware.

Q Do you know when you first became aware that the SEC took this position?

A On April 7th.

Q Do you know when you first --

MR. LIMAN: Strike that.

Q What was the first published release by the SEC of which you were aware of on this subject?

A I think it was March 25th in their -- they had a release in March, shortly thereafter.

Q Well, March isn't shortly after April.

A May. Pardon me. It was in May. That --

Q Well, there is a stipulated fact.

A It was in April, late in April, that they came out.

THE COURT: Wasn't it May 5th?

THE WITNESS: Yes.

Q Now, when did you become a director of Piper?

A March 25th.

Q Did there come a time when you determined what package of securities would be contained in your exchange

offer for Piper?

A Yes.

Q And when was that?

A Shortly before May 7th.

Q And what happened on May 7th?

A On May 7th we filed an amendment to our registration statement, furnishing the package, among other things.

Q And did you make an announcement of what your package was on that day?

A Yes.

Q Now who participated in the decision of what package you would offer?

A Sherill -- well, Armond Erpf, our investment bankers, and our board.

Q Was there any discussion of what value the package you were proposing to offer would have?

A Yes.

Q And with whom was the discussion?

A Mr. Erpf, Mr. Sherill, our board.

Q And what was said on that subject?

A Well, it had to have a value, that the market value was higher than the market price of the Piper stock.

Q And did they express an opinion as to what the value was of the package that you were offering?

A Yes.

Q What did they tell you?

A They said that it was between 75 and 80.

Q Did you make any announcements then to that effect?

A No.

THE COURT: What was the yardstick you used for that value?

THE WITNESS: They used the conversion --- we had a preferred stock, and they would take the value of

our common stock as converted for the preferred, that was in the market place, and they gave a five per cent premium for the preferred nature of the stock.

They had a formula for the warrants, which was 40 per cent of half the difference between -- I think -- I am not -- if I am stating it wrong, it will work out bizarre -- half the difference between the exercised price and the market price, and then they gave a discount to that because the warrant was a five-year warrant.

THE COURT: Had that valuation been placed upon a so-called expert judgment rather than on prices obtainable in the market?

THE WITNESS: Yes.

THE COURT: Is that a fair way of valuing a package?

THE WITNESS: Fair to whom?

THE COURT: Fair to yourself.

THE WITNESS: Yes.

BY MR. LIMAN:

Q You say that you didn't make an announcement of the value of this package?

A No.

Q What was the purpose, then, of having discussions about the value?

A Because we knew that the package would be evaluated by Wall Street and we wanted to know what they -- how they would evaluate it.

Q And why did you want to know that?

A That would affect the success of the offer. If they evaluated it too low they wouldn't advise people to tender, and you would have an unsuccessful offer.

Q Now you mentioned that your offer, which the Court has described on, I believe, on finding 64 --

MR. LIMAN: I would note, your Honor, that the way in which the offer is stated in 64 is in terms of the split stock of Chris-Craft. Chris-Craft was splitting its stock during this period and the registration statement itself -- it was a two-for-one split, so that the registration statement that your Honor has I think it is stated in terms of 1.2, convertable into 1.2 shares of common and one warrant, and this is restated in terms of the post-split stock.

Q Had you issued any warrants before this, Mr. Gordon?

A Yes.

Q Was there any trading in any of your warrants?

A No.

Q To whom were your warrants issued?

A Insurance companies and the Ford Foundation.

Q Institutional lenders to you?

A Yes.

Q Had you issued this two-dollar preferred stock before?

A No.

Q So there was no trading in the two-dollar preferred stock, either?

A That's correct.

Q Your common stock was listed on the New York Stock Exchange?

A Yes.

Q Now was May 8th a day that stands out in your mind?

A Yes.

Q And did you read the Bangor Punta announcement that day?

A Yes, I did.

Q And do you recall what happened to the Chris-Craft stock following the Dow Jones announcement of that offer?

MR. RYAN: Objection, your Honor.

A Yes, I do --

Q Do you know?

A Do I know? Yes.

Ct: Wait for the objection --

MR.LIMAN: You know, Mr. Gordon, there is an objection and you should wait.

THE WITNESS: I apologize, sir.

Q What happened to your stock?

A It dropped.

Q Do you remember by how much?

A Four points.

Q Did the board of directors of Chris-Craft decide to do something with respect to the offer?

A Yes.

Q Following that?

A Yes.

Q And what did you decide to do?

A We decided to sweeten the offer.

Q And who participated in that decision?

A Our board of directors, which included two investment bankers.

Q And what sweetener did you decide upon?

A We added ten dollars in cash.

Q And how did you arrive at that?

A It was to bring our offer up over 80 dollars a share.

Q Did you make an announcement then that your offer was worth more than $80 a share?

A No.

Q Who told you, if anybody, that your offer was worth $80?

A They told us that our offer would be valued at $80. Nobody told me that it was worth $80.

Q Who told you that it would be valued at $80?

A The investment bankers on our board.

Q And you drew a distinction between worth and value?

A Yes, very definitely.

Q What do you mean? What did they tell you?

A That Wall Street experts would value this offer at more than $80 in their opinion.

THE COURT: I didn't understand what you were saying.

Did you say that you added the ten dollars as a sweetener to make the offer valued at above $80?

THE WITNESS: Yes.

THE COURT: Or valued at $80? I didn't get what you said.

THE WITNESS: Well, there is a range in here. I think it was either at or about $80. Nobody could be

very --

THE COURT: Was it to meet the other offer or to exceed the other offer?

THE WITNESS: To exceed. Nobody was sure it would.

THE COURT: And the other offer spoke of a package value in the judgment of First Boston at $80?

THE WITNESS: Yes.

THE COURT: And your intention was to exceed that offer?

THE WITNESS: Yes.

THE COURT: All right.

MR. LIMAN: I direct your Honor's attention to Uncontested Finding 80, which refers to the fact that the offer was sweetened by the ten dollars on May 16, 1969, the day following the effective date of Chris-Craft's exchange offer.

BY MR. LIMAN:

Q Was there a reason that you waited until the day after it became effective to sweeten, Mr. Gordon?

A Yes. It is a technical reason. We had to file a 13(d) because it was a cash now, and the Commission took the position that it was under the cash tender

rules.

Q But when you finally announced that it would become effective, you first announced your offer as sweetened, is that correct?

A Our first announcement was of the sweetened offer, yes.

Q At the time you fixed this offer with the ten dollars in cash, did you know what securities Bangor Punta proposed to offer to the public?

A No.

Q Mr. Gordon, when did it come to your attention that Bangor Punta was purchasing Piper stock for cash after it made its May 8th announcement?

A On the 16th of May.

Q And how did it come to your attention?

A It came across the broad tape that Bangor Punta -- well, it was actually called to my attention earlier that Bangor Punta may be purchasing stock of Piper.

Q I asked you how it came to your attention that they had purchased stock.

A On May 16th it came across the broad tape.

Q And how did you learn of that?

A It came -- a broker called me and told me it was

coming across the broad tape.

THE COURT: What was coming across the broad tape?

THE WITNESS: An announcement that Bangor was purchasing 80,000 shares, I think it was, of stock.

Q Was it 100,000 that was announced?

A Yes.

Q You don't remember whether it was 80,000 or 100,000 shares?

A It was 80,000 or more. It might have been a hundred. There was a press release, a ticker tape that I had at the time, that I had yesterday. I just don't remember right now.

Q And what if anything did you decide to do about that?

A Well, we knew that -- we had an appointment before it came across the broad tape. We had an appointment to see Bernie Kornfeld of IOS, and between when the appointment was made and when we actually met with Bernie, the announcement came across the tape that Bangor Punta had bought this stock, and Herb Siegel and I discussed this, and he said he thought that that was Bernie's block that they had bought, and I said we ought to go and talk to Bernie anyhow, to make sure, that he was

sure.

And he said that was the swing block. That was it.

Q Mr. Gordon, you call him Bernie Kornfeld; had you ever met him before?

A No.

Q Have you met him since?

A I met him just that day. I never met him before or after.

THE COURT: What did he say, "Call me Bernie"?

THE WITNESS: I picked up what the newspapers call him. They all call him Bernie.

Q When did you decide to bring the lawsuit, Mr. Gordon?

A Shortly thereafter.

Q It is a stipulated fact then in this case that your exchange offer, as sweetened by the ten dollars in cash, was open from May 16th through July 24th, when you became active with another offer for Piper, and I am referring to the dates on finding 121, your Honor.

During that period that this offer that you had was outstanding, did you make efforts to solicit acceptances of your exchange offer?

A Yes.

Q Did you personally participate in any of these efforts?

A Yes.

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Q What did you do?

A I made a few phone calls to large stockholders to try to parsuade them to tender to Chris-Craft.

Q Do you remember the names of any of them?

A Just one.

Q Who?

A Ellsworth Buck.

Q Where did you get the names from?

A From the Piper shareholders list.

Q How did you get the Piper shareholders list?

A In Court, in Pennsylvania, after I was a director.

Q Do you remember what you said to Mr. Buck and and what he said to you? Do you remember when you spoke to him?

A In May.

Q After you were effective?

A Yes.

Q What did you say to him, what did he say to you?

A I told him that we had, Chris-Craft had, a tender offer for shares out and asked him if he had gotten our prospectus, and he said he had. I asked him if he would be interested in tendering his shares to Chris-Craft, and he said no, he wouldn't, Bangor Punta was offering $80

for his stock, why should he tender to us and he suggested we should give him cash for his stock.

Q What did you say?

A I told him that Bangor Punta was not offering $80 but they were offering a package of securities valued at $80, and he said, "What's your package valued at?" I said, "I can't really tell you, I am not allowed to tell you and they shouldn't have told you."

Q Did you offer to buy his shares for cash?

A No.

Q Did you have any success in any of the other conversations you made to large shareholders of Piper, did you get them to tender to you?

MR. RYAN: I object to that question, your Honor, unless he starts listing the supposed conversations.

THE COURT: Overruled.

A What was the question?

Q Did any of them say that they would tender to you, people you called?

A None of my phone calls.

Q Do you remember what any of them said and, if so, can you identify the stockholders in any way?

A No. I remember that they all said they were going to wait for Bangor Punta's $80 offer. I had no

luck with anybody I called. I only made a few phone calls.

Q Were there other people making phone calls for Chris-Craft?

A At first there were, and then they gave up.

Q Do you know how many shares were tendered to Chris-Craft by the date that it changed its exchange offer again, July 24th?

A Prior to that date?

Q Yes, sir.

A 31,000, approximately.

Q Why did you wait until July 24th to change your exchange offer again?

A We felt we could not compete against an unknown package valued at $80.

THE COURT: When did you come to realize that there was a package valued at $80 and not $80 that was being offered for Piper stock?

THE WITNESS: I knew it right away.

THE COURT: How did you know it, merely by reading the release?

THE WITNESS: I read the release.

THE COURT: That is what it meant to you?

THE WITNESS: It meant to me that they would offer a package that would be worth $80, yes

THE COURT: And not $80 for Piper stock? That is the other meaning?

THE WITNESS: It is not the other meaning, it is the same meaning. If there is a package offered of $80, then Piper stock will sell at $80, or close to it.

Q You knew they were not going to offer $80, in cash, you knew it wasn't a cash offer?

A That's right.

THE COURT: What did you understand by the words "valued at"?

THE WITNESS: I thought it would have a market value, that people could sell it at $80.

THE COURT: Did that connote to you that there were only marketable securities involved there or securities as to which the market had placed a price on them?

THE WITNESS: Yes.

THE COURT: What did you understand by the further statement in respect of the judgment of First Boston? Did that merely mean to you picking up the Wall Street Journal to find a price?

THE WITNESS: That meant to me that it would be a real $80, that First Boston wouldn't put its name to something unless it was an honest $80.

THE COURT: Did that indicate a valuation job

rather than a mere examination of a list of market prices?

THE WITNESS: Absolutely not. It meant to me that you would be able to sell your stock for $80. First Boston is a very careful firm.

THE COURT: Sell what stock?

THE WITNESS: Your Piper stock, that the package Bangor Punta was offering would have a resale value of $80 so that the Piper stock would reach $80. I understood the package value would have been -- my own understanding was that it would have to be above $80 because of the discount factor.

THE COURT: What I am trying to get at is whether the words "judgment of First Boston" were just mere surplusage when you read the release?

THE WITNESS: To me they were at least as important as the $80 price. They were maybe the most important words because it gave believability to the $80 figure.

THE COURT: Did it also indicate a computation was involved?

THE WITNESS: Yes.

THE COURT: And did it indicate that a computation was involved beyond a mere inspection of prices available in the market?

THE WITNESS: It was a computation that would

have to be related to a price in the market. I assumed if their computation turned out to be wrong, they would have to recompute, but that they would have to give it the $80 value.

THE COURT: Are you saying to me that meant to you there were no factors ot her than listed quotations involved in the judgment --

THE WITNESS: To me it meant the price, because you were not allowed to talk about price at all, I didn't think, and certainly if you talked about price, youhad to deliver the price and not some imaginary package of securities that somebody couldn't sell.

THE COURT: Read him the last question, please.

(Question read.)

THE COURT: -- judgment of First Boston?

THE WITNESS: Did what mean that to me, sir?

THE COURT: The statement that a package would be offered valued at in the judgment of First Boston $80 per share.

Did that mean there was no judgment factor involved in it and that it merely meant to have some clerk pick out the listed prices and add them up?

THE WITNESS: No.

THE COURT: What did it mean -- what did it connote,

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I should say?

THE WITNESS: It counted that First Boston would pick a package of securities that would have a resale value of $80. How they were going to safeguard that, I didn't know, but I assumed they would reserve a second bite at the apple to safeguard it. That was all I could figure out.

THE COURT: Clearly it didn't mean it was merely a compilation of quotations?

THE WITNESS: No.

THE COURT: When you say "no," are you agreeing --

THE WITNESS: It was not merely a compilation of quotations.

THE COURT: All right.

BY MR. RYAN:

Q Mr. Gordon, did you read comment concerning the Bangor Punta offer before they announced the securities that would be included therein?

A Yes, I did.

MR. RYAN: Your Honor, I missed the first part of that question.

THE COURT: "Did you read comment."

He may answer yes or no.

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A Yes.

MR. LIMAN: I have Exhibit 35 for identification, a Value Line report, dated June 2, 1969.

Q I will ask you if your initials appear on this?

A Yes.

Q Did you get it at or about the date that appears thereon?

A Yes, June 2, 1969.

Q Who gave it to you?

A It was circulated in our office.

MR. LIMAN: I would offer this, your Honor, as bearing on how the $80 words were understood --

THE COURT: By Value Line?

MR. LIMAN: That is one publication, your Honor.

MR. RYAN: Objection.

MR. PENNOYER: I object.

THE COURT: Sustained.

MR. LIMAN: Your Honor, I would like to brief this point for you because I believe that on how words are understood I can show you cases that permit the way in which they appear in the press --

THE COURT: Were your investment judgments controlled by what you read in Value Line?

THE WITNESS: No.

THE COURT: All right, you can brief it.

Q Do you know whether anybody else's investment judgments were controlled by it?

A No.

Q Mr. Gordon, when did you learn what the components were of the final Bangor Punta package that becamse effective on July 18, 1969?

A Shortly before it became effective.

Q What if anything did Chris-Craft decide to do?

A We decided to further sweeten our offer.

MR. RYAN: Your Honor, I think he should ask Mr. Gordon what conversations he had. Mr. Gordon seems to be testifying as to conclusions with no testimony as to who participated in the discussions or anything else.

MR. LIMAN: I am leaving a lot for cross, but I am willing to cover it.

Q Who participated in these discussions and what was said?

A The board of directors, Armond Erpf. I don't remember if Virgil Sherill was around then. I remember Armond Erpf quite distinctly.

Q Mr. Siegel?

A Yes. He was a member of the board.

Q Mr. Rochlis?

A Yes.

Q What was said?

A Mr. Siegel said we had to come out with a very strong package to top Bangor Punta and asked us to try to arrive at a package that would have a very high valuation.

Q Did you arrive at a package?

A Yes.

Q What did you arrive at?

A We increased the number of warrants from two to six, we increased the life of the warrants from five years to ten years, we increased the conversion rate of the preferred stock by one share, we eliminated the minimum number of shares that we would take. There was an 80,000 share minimum before we were obligated to take all -- that was eliminated.

Q Did you have any discussion with anybody as to what this package would be worth?

A Yes, without investment bankers.

Q Who was that?

A Armond Erpf is the man I remember discussing it with, and I think Virgil Shexill too.

Q Was any opinion expressed?

A Yes.

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Q What?

A That it was worth $90 to $100.

Q Did you in any way communicate their opinion to the shareholders of Piper?

A No.

Q During the period that the Bangor Punta offer was outstanding did you have any discussions with any of the Chris-Craft executives about the possibility of tendering your Piper shares to Bangor Punta?

A Yes, we did.

Q What was said on that subject and by whom?

A Herb Siegel and Jim Rochlish and maybe other directors that had raised the possibility of our tendering to Bangor Punta because they said we had a terrible risk here of being locked into a minority position, and I told them that the problem with tendering to Bangor would be that we had not held our stock six months, that our offer closed February 4th and six months would be August 4th and therewe would be liable for short-swing profit, that Bangor had valued its package at $90 a share and we might be stuck for the difference between what we paid for our stock and that $90 price, under Section 16(b), and in exchange we would not have that profit, we would have have a relatively unmarketable package of Bangor Punta

stock and warrants and debentures and that, moreover, we would have to pay a tax and that the Internal Revenue might take that $80 price as being the price we got. So that I didn't see that we could tender to Bangor Punta in its exchange offer.

Q Did anybody else express the same opinion?

A My opinion, I think, was dispositive of the question. There were discussions, yes, but I don't think -- there were other discussions.

Q Finding 137, which is uncontested, states that Chris-Craft received 112,089 shares on its exchange offer which closed on August 4, 1969. That is the first sentence of it.

After you closed your exchange offer, did you take any steps to acquire any further shares of Piper?

A Yes.

Q Beginning when?

A The next day.

Q What did you do?

A Started buying some more stock.

Q From whom did you make your first purchase, if you recall?

A Leonard Sheriff, S-h-e-r-i-f-f.

Q When did you agree to buy his shares?

A The day after the exchange offer, or two days after.

Q Why did you buy additional shares of Piper?

A We wanted to stay within the range of control of Piper, assuming we could get them to divest themselves of either of the two blocks of stock that we felt that they had unlawfully acquired.

Q Why did you stop buying Piper? I assume there came a point that you stopped buying Piper.

A We got within that range.

Q Did you give some consideration at Chris-Craft to the possibility of buying over 50 per cent, enough shares to give you over 50 per cent --

A Yes.

Q -- after the Bangor Punta and Chris-Craft exchange offers closed?

A Yes.

Q And who gave consideration to that?

A Herb Siegel and myself and Jim Rochlis.

Q What was said?

A Well, after the exchange offer we had about 41 per cent and Bangor Punta had about 45 per cent and somebody said, or we all said, that we had to buy two shares for every share that they had to buy in order to get to

51 per cent before they did and that was an impossible task, ~~task~~ and we couldn't do it. If you think about it, when you get to the last shares they could pay any price for it and outbid us.

Q Did you discuss this with your investment bankers?

A Yes, they all thought it was an impossible task to buy twice the number of shares --

MR. PENNOYER: Objection.

A They all said they thought it was an impossible task.

THE COURT: Did you buy the 29,200 shares between August 12th and 18th from Leonard Sheriff, did they all come from him?

THE WITNESS: Oh, no. He was representing a group of shareholders.

THE COURT: You bought his block?

THE WITNESS: Yes.

THE COURT: Was that 29,200 shares?

THE WITNESS: Yes.

Q His was not the total?

A No. His was 25,000 shares.

MR. LIMAN: I have here, your Honor --

THE COURT: I just want to clear up the figures in the finding. It is a small point but --

MR. LIMAN: I think his was actually 24,000, your Honor. I have a document here that reflects it.

Q Did there come a time when there was a change in the composition of the board of directors as it was constituted on March 25th when you took your seat?

A Yes, at a board meeting of Piper on August 12th, I believe it was.

Q Can you tell me what the change was?

A Bangor Punta took control --

MR. RYAN: Objection, your Honor.

Q What were the changes in the seats?

THE COURT: Strike out the answer.

Q Do you want to look at the minutes?

A May I?

THE COURT: Did you go on the board?

THE WITNESS: I was already on the board.

THE COURT: How many other directors suggested by Chris-Craft went on the board?

THE WITNESS: Three.

Q Prior to that how many directors were on the board?

A Two.

Q Did you have a conversation with respect to adding the third director?

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A No. They just added him.

Q Did somebody mention to you that you could have a third director?

A Yes.

Q Who?

A David Wallace, at the meeting.

Q Who is David Wallace, for the record.

A The principal executive officer of Bangor Punta.

Q When was that?

A August 12th.

Q If I show you the minutes of August 12, 196 --

MR. LIMAN: They are not marked for identification at this time and I don't see any reason to clutter the record with them, your Honor.

Q -- would that refresh your recollection?

A Yes.

Four directors resigned, Howard Piper, Thomas Piper, Walter Jamineau and Charle Poole, and they were replaced by four people, Dave Wallace, who was director and chief executive officer for Bangor, Gordon Robertson, who was an officer of Bangor, John Flick, Bangor chief counsel, and Nicholas Salgo, S-a-l-g-o, who was Bangor Punta chairman of the board and who was then elected chairman of Piper.

THE COURT: Did the new composition of the board reflect approximately the cumulative voting strength of the rival contenders for control?

THE WITNESS: I would have to do a calculation on that. Whether it was numerical or not, butit reflected in absolute terms that, yes.

Q Was the number of directors that you were given ever expressed to you in terms of the number you could get by cumulative voting?

A The number we had was the number we could get by cumulative voting, yes -- we think. There was some question as to whether we could have gotten one more.

Q Did there come a time when you had a discussion with any of the non-Chris-Craft directors of Piper with respect to the Piper plane known as the Twin Comanche?

A Yes.

Q With whom?

A With David Wallace.

MR. LIMAN: Your Honor, at this point I can see that the Piper lawyers are making motions. If they want this portion of the record to be treated the way in which other matters concerning this subject have been treated, then I think that we ought to make some notation to that effect. I just caught Mr. Pennoyer on the rise.

MR. PENNOYER: We so request, your Honor. I don't who is in the room at this point, but I am not asking that the room be emptied. However, I do think that if there are any people from the press, we should not have them present at this point.

MR. LIMAN: There is only one person I recognize, and that is Mr. Gordon's father-in-law, and that is the only -- I think everybody else came in with your entourage. I may be wrong.

MR. PENNOYER: Then I have no problem.

Q When was that?

A September 4th.

Q What year?

A 1969.

Q Where was the meeting?

A At the office of Bangor Punta, in New York.

Q Who was present?

A David Wallace. Larry Barnett, who was a director of Chris-Craft and who was also a director of Piper; Jim Rochlis and myself, all the three of us being the Chris-Craft directors who were also directors of Piper.

Q And what was said?

A He told us that --

Q Who is "he"?

A Dave Wallace told us that they had discovered, that Bangor Punta had discovered that there was a serious safety problem with the Piper Twin Comanche -- that was the lowest price twin in the market, which Piper manufactured -- that there had been a number of fatal accidents and that Bangor Punta was taking steps, strong steps to remedy the situation, that the Pipers had been sweeping this under the rug.

Q Is that what he said to you?

A Those were his exact words, and that Bangor Punta was taking steps to remedy it. They were -- I think at that meeting. It might have been the next meeting, on September 12th, when they mentioned placarding.

Q When did you next have discussion outside of Chris-Craft with respect to the Twin Comanche?

A September 12th, at the apartment of Nick Salgo, on 72nd Street.

Q Mr. Salgo at this time was the chairman of Piper?

A He was the chairman of the board of Piper Aircraft.

Q As well as the chairman of the board of Bangor Punta?

A Yes.

Q And what if anything was said by Mr. Salgo? Was Mr. Wallace present?

A Yes.

Q Who else was present?

A Herb Siegel and myself.

Q And what if anything was said by Messrs. Salgo or Wallace concerning the Comanche?

A They told us again that the Twin Comanche problem was a serious one, that the plane had been placarded and that the FAA had found a non-compliance, that the plane had a tendency to spin and that there had been some more than sixty fatal accidents and more than one hundred-twenty deaths as a result of this plane, and that Bangor was being diligent in its approach to the subject. And we said that they should hire an independent safety expert, because they said they didn't trust the Pipers, and they said that they had an air -- an air expert, that they were fortunate they had a man at Bangor Punta who knew a lot about this busi-

ness. And we suggested that that man was maybe not enough of an expert and they should get an independent expert for Piper.

Q Now, prior to your first meeting with Mr. Wallace on, I think you said, September 4th, on the subject of the Twin Comanche, had you ever heard of that plane before?

A Oh, yes.

Q How had you heard of it?

A I had read about it in their annual report. It was their lowest price twin. It was an important part of their line. They only had --

Q How did you form that conclusion?

A Well, the listed the number of planes they were selling. I think they sold 166 Twin Comanches the year before.

Q Had you read the prior annual reports other than the '68 annual report before you commenced your tender offer for purchase?

A Yes; I had.

Q Now --

A They touted -- not touted, but talked about how important that plane was, themselves, in their annual report, and I was familiar with that.

Q Now, as a director of Piper, are you familiar with

what has happened to the Twin Comanche as a product since these meetings with Mr. Wallace and Mr. Salgo?

A Yes.

Q Tell the Court what the status of the Twin Comanches is today.

A The Twin Comanche as such was discontinued shortly afterwards. They brought out a plane called the Twin Comanche Cr, which CR stands for Counter-Rotating, in which the right engine was counter-rotated, which we were advised -- and there were other changes on the plane which were designed to affect the flow of air over the plane and which we had been advised completely eliminated the plane's tendency to stall spin. It also increased the price of the plane.

Q What happened to the sales of that model?

A That model is a sticky seller. The Twin Comanche CR is a sticky seller.

Q What do you mean by a sticky seller?

A I was told that they have inventory problems with selling the Twin Comanche.

Q That is the new version of the Twin Comanche?

A That's right. That's all they have now.

Q Are you aware, as a director, of what happened to Piper's insurance rates?

A Yes.

Q What?

A They went up 50 per cent.

Q When?

A Last year.

Q Before Mr. Wallace spoke to you on this subject, on September 4th, had you known anything about the accident statistics of the Twin Comanche?

A No.

Q Was he the first person who told you that there was any safety problem with respect to that plane?

MR. PENNOYER: Objection as leading, your Honor.

THE COURT: No. Overruled.

A Yes.

Q I am going to direct your attention to certain agreed findings concerning the Twin Comanche, Finding 210, which relates to a telegram dated September 2, 1964, from the FAA; Finding 211, which relates to another telegram from the FAA, of September 11, 1964; Finding 213, which relates to a letter dated December 28, 1964, from the FAA; Finding 212, which relates to a Piper average pilot test; Finding 218, which relates to a NASA report; Finding 220, which relates to a report known as the Dipe Report; Findings 225 and 231, which relate to certain accident statistics of the Twin Comanche; and Finding 237, which relates to certain insurance

increases.

Now, in case of Finding 237, there is a reflection of an increase on 6/30/69. I will ask you for the moment to consider that fact.

You are familiar with these findings, Mr. Gordon, aren't you? You have gone over them?

A Yes, I have.

Q When did you become aware of the facts set forth in those uncontested findings?

MR. PENNOYER: Your Honor, I realize the problem of trying to shorten this, but there has been reference to maybe fifteen so-called findings, with a great many facts in them, and I think I would have to object to a question like that, because a great many of them are very detailed.

THE COURT: Overruled.

(To witness) When did you become aware of these findings?

THE WITNESS: After September, '69. Between September, '69, and mostly, I guess, April of 1970.

THE COURT: Was there any one reason why you should have been aware of them earlier? Was there any basis for being aware of them earlier?

THE WITNESS: I don't understand your question.

THE COURT: Well, there seems to be a point here

that you acquired this information for the first time in September, '69.

THE WITNESS: Yes.

THE COURT: What inquiries did you make which should have elicited this kind of information at an earlier time?

THE WITNESS: I read their annual reports and the information about the company that was available publicly.

THE COURT: And it didn't give you the details of their failures? Is that your point?

THE WITNESS: They didn't give me the details. They didn't give me the slightest clue.

THE COURT: Was it customary to put this type of information in an annual report?

THE WITNESS: The conclusions that this information leads to I would consider required an annual report, yes.

THE COURT: Does Chris-Craft have customers who complain about accidents?

THE WITNESS: Yes.

THE COURT: And there are fatal accidents on boats, aren't there?

THE WITNESS: A few.

THE COURT: And when those accidents occur, Chris-

Craft is subjected to lawsuit, isn't it?

THE WITNESS: Yes.

THE COURT: And claims are made that there is something mechanically defective, that safety regulations have been violated in some way?

THE WITNESS: Yes.

THE COURT: Do you put that in yo[illegible]al report?

THE WITNESS: If it reached this magnitude, we would have to, yes.

THE COURT: Have you ever put anything in your annual reports of Chris-Craft about that type of information?

THE WITNESS: Yes.

THE COURT: I would like to see it some time.

THE WITNESS: About DDT, sir, where it became important. There were enough complaints about DDT at a point in time where it reached a magnitude where it was of financial importance, a threat to the company. We put that into our annual reports and into our reporting -- reported information.

THE COURT: Was that after the government came down and banned the use of DDT?

THE WITNESS: Long before. Years before.

Q Mr. Gordon, you knew when you were buying into this airplane company that planes have accidents?

A Yes.

Q now, can you tell me whether, had you known --

MR. LIMAN: Strike that.

Q The fact that you knew that planes do crash on occasion didn't affect your judgment on whether to go forward with the tender offer to buy stock of Piper, did it?

A No.

MR. PENNOYER: Objection.

Q Can you tell me, if the facts which I have referred to in the uncontested findings had been stated in the Piper annual reports or the other documents made public by Piper that were available to you, whether you would have been in favor of purchasing Piper stock, and if not, why not?

MR. PENNOYER: Objection.

THE COURT: Sustained.

Q Can you tell me whether if you had known the facts stated in the uncontested findings, you would have been in favor of Chris-Craft's purchases of Piper?

THE COURT: This, Mr. Liman, sounds like a wisdom born after the event. It is a very argumentative area, and I don't think a statement now, after a frustrated effort to get control, carries any assurance on which I could predicate a finding as to what the facts should have been in the spring of 1969.

MR. LIMAN: Maybe I can develop this, your Honor, because it is not just a matter of not getting control.

Q Have you had any discussions with Mr. Wallace or Mr. Salgo with respect to whether they would have bought Piper had they known about this?

MR. RYAN: Objection, your Honor, unless he identifies when and where such conversations took place.

MR. LIMAN: I have only asked him whether he had a discussion. The next question is when, where?

MR. PENNOYER: Your Honor, my problem is that some of these were also after the event, after the period during which Chris-Craft was buying stock. So to ask this kind of question in a general way, I think is clearly improper, apart from the position of the witness --

THE COURT: Did you have any talks with any director of Piper or Punta, indicating that in the spring of 1969 they were aware of the things that are being discussed now about this Twin Comanche?

THE WITNESS: Yes, sir.

THE COURT: Who?

THE WITNESS: I met at --

THE COURT: Names. Who?

THE WITNESS: Wallace Smith, Bill Piper, Dave Wallace, Nick Salgo. They were all aware ---

Q The question was, in the spring of 1969, who said he was aware of it in the spring of '69?

A In the -- the spring of '69 ended in --

THE COURT: Call it any time up to the time that you stopped buying stock.

THE WITNESS: No. I hadn't heard about this -- had I heard about that at that time, or did I hear later that somebody knew it at that time?

THE COURT: Thus far I will assume that you haven't answered my question, and I will start it again so that the record is clear.

Did any director tell you that he was aware of the things that you learned beginning in September of 1969 and that he had become aware of that at an earlier date during the period of your purchasing?

THE WITNESS: Yes.

THE COURT: Who?

THE WITNESS: Bill Piper, Pud Piper, and then there was a group of officers of Piper who told me this, too. Wally Smith being the chief --

THE COURT: Was Mr. Salgo one of those who told you that he knew of what you learned in September and later, at a time considerably earlier?

THE WITNESS: No.

MR. RYAN: It is an agreed fact, your Honor --

MR. LIMAN: That's right.

MR. RYAN: -- which the parties agreed that we didn't know about the existence of these matters until they knew.

THE COURT: Just going by the lead that Mr. Liman gave me here gave me the impression that this was a piece of suppressed knowledge.

MR. LIMAN: Your Honor raised the question as to whether Mr. Gordon's conclusions as to whether or not he would have bought Piper is simply the second judgment of a loser in a fight for control. What I was going to lay a foundation for -as to bring out a conversation between him and Bangor Punta, which is anything but the loser in this fight for control, in which they expressed substantially the same view which Mr. Gordon would testify to.

THE COURT: You m-an, they also considered that they have been taken?

MR. LIMAN: I think so, your Honor.

THE COURT: So that the criticism that you are trying to mount here is not a criticism against Bangor Punta but against Piper?

MR. LIMAN: Your Honor, I have made it perfectly clear in the findings --

THE COURT: Just make it clear to me.

MR. LIMAN: That's right. This point goes to the separate liability of Piper.

THE COURT: It was not clear to me the way you approached it. I understand it now. You can go ahead.

MR. PENNOYER: May I say, Mr. Liman made a statement saying, I believe, that the findings of Bangor Punta indicate that if the matters referred to were material they didn't know about them. I don't think there is any proposed --

THE COURT: I want to call your attention that those agreed findings are not yet in this record.

MR. PENNOYER: Yes, sir.

MR. LIMAN: That is what I had hoped we would do tomorrow afternoon, your Honor.

Q Did you have a discussion with any of the Piper directors who were also representatives of Bangor Punta as to their view of the Twin Comanche findings that they had just made?

A Yes.

Q With whom?

A Dave Wallace and Nick Salgo.

Q And what if anything did they say?

MR. RYAN: Objection, your Honor, unless we fix a time and place.

Q When and where?

MR. PENNOYER: I have objection insofar as Piper is concerned. This is a case against Piper and not a case against the Bangor Punta people. Mr. Wallace and Mr. Salgo are Bangor officers and directors.

MR. LIMAN: Mr. Salgo is also chairman of the board.

Let us fix a date and see if he was chairman then.

THE WITNESS: September 12th was the first time that I had such a conversation.

Q And what was said?

MR. PENNOYER: Objection.

THE COURT: Overruled.

MR. PENNOYER: And specifically, your Honor, not binding on Piper.

THE COURT: Overruled.

A Mr. Wallace said that he would never have made this investment if he had known the facts about the Twin Comanche.

Q Do you share that view?

MR. PENNOYER: Objection.

MR. LIMAN: It is not proper in form, the question. I will withdraw it.

THE COURT: Well, I will take the answer under the proverbial "for what it is worth."

A Yes.

Q Why?

A Because it reflects adversely on the management and the product of the company. It resulted in the company being unable to get a clean certificate from the accountants this year, with this tremendous liability, possible liability the company has. The accountants have taken exception to the insurance coverage. It makes it necessary to make disclosures about this to any potential purchaser of these shares, thereby lowering the value of the -- of Piper, and it has resulted in the elimination of an important part of their line, an important profit contributor, and it has increased their insurance.

THE COURT: What was the contribution of the Comanche to the mix of the profit picture?

MR. LIMAN: That is a stipulated finding, your Honor.

THE COURT: What was it?

MR. LIMAN: It was substantial. For 1963 through 1969, it accounted for over 10 per cent of Piper's total dollar sales.

THE COURT: Is there anything to indicate what it contributed to the net?

MR. LIMAN: Those records are not available.

THE COURT: I assume that with a lot of elements in a manufacturer's line, there may be some that contributed nothing and some may contribute something or some more, so --

THE WITNESS: The Twin Comanche -- the Cherokee, which was half of the plane sales by units, 2000 of the 4000 planes. The Cherokee was a minor profit contributor. In fact, the Cherokee 140 was a loss leader. So that leaves the other planes to pick up a big part of the profits.

Q Was it your understanding that the Twin Comanche was a loss leader?

A No. It was profitable.

Q But you don't know the --

A All the planes were profitable except the Cherokee, and also you have the problem of sheer volume is important in a business like this, because when your volume drops your indirect costs go up. It was a significant element of Piper.

And the insurance increase represents a material item of cost. It was a projected increase, if their dollar volume --

MR. PENNOYER: I object to that. There has been no testimony that the insurance increase was attributable to the PA-30 or that any portion of it was. This witness is making the assumption giving that testimony, and I move

to strike it.

THE COURT: I will strike it only on the ground that there hasn't been a proper foundation laid for it yet. But the subject is an appropriate one if properly presented.

Q Were you told by any of your fellow directors of Piper that the insurance increase of Piper, which is reflected in one of the agreed findings, was in any way attributable to the Twin Comanche?

A Yes. Bill Piper, Jr. himself told me that, that it was a substantial contributor.

Q When?

A At a board meeting in 1970, I think.

THE COURT: Did all insurance go up in pantographic relationship in 1970?

THE WITNESS: All insurance of what, sir?

THE COURT: All insurance, on all phases: consumer insurance and other types of insurance. Isn't it a fact that the cost of insurance generally rose?

THE WITNESS: Yes, sir, but not at this rat This was a very sharp rate, of 50 per cent increase. We experienced no such increase in our boat insurance.

THE COURT: That doesn't point an arrow at the particular item.

THE WITNESS: No. Mr. Piper told me that that was

the cause.

Q Mr. Gordon, you have referred to the fact that Mr. Piper told you this or Mr. Rochlis told you something else. Did you during the period that you were still purchasing Piper stock and while you were a director of Piper make any efforts to obtain information concerning the company?

A Not beyond the -- what period?

Q After you became a director and before you stopped purchasing stock.

A Yes. I asked -- after I became a director, I asked them for information about the company.

THE COURT: Well, that is when you were litigating in court, when you were trying to get an injunction against Bangor Punta, wasn't it?

MR. LIMAN: No.

THE COURT: Let me ask the witness.

(To witness) Wasn't that during the course of your litigation?

THE WITNESS: It was prior.

THE COURT: Prior?

THE WITNESS: And after and during, yes.

Q But you had already been in litigation with Piper; am I correct?

A Yes.

Q The litigation with Piper --

MR. LIMAN: The litigation with Piper, for the record, your Honor, started when they brought a proceeding to keep them from voting their shares, so that there has been litigation, I think, almost continuously since February. Is that fair to say? Chris-Craft brought the Grumman lawsuit.

MR. PENNOYER: Maybe you should ask the witness the questions.

MR. LIMAN: I think this is an undisputed fact.

Q How long has litigation in this matter been going on? Not with Bangor Punta but with Piper?

A It seems like forever. The first litigation between us and Piper, I think, started in July.

THE COURT: Of what year?

THE WITNESS: Was it earlier? July, '69, when they brought an action? It was earlier. We brought an action to get information, I think, a stock brokerage list.

Q Did you bring a suit involving the Grumman transaction?

A Was Piper a defendant in that? Yes. Then that was the first litigation.

Q That was when?

A February. We might have started in March, February or March.

Q And was there litigation in Pennsylvania with Piper?

A Yes.

THE COURT: That was all part and parcel of the plan to get control as soon as possible, wasn't it? One of the offshoots?

THE WITNESS: That was one of the offshoots of it, yes. It was also to get information about Piper.

THE COURT: All right. Standard operating procedure, well-known.

MR. LIMAN: I was just covering the area. I thought your Honor was making the point that they didn't get --

THE COURT: I am just trying to find out what the context is o- all the statements that are being made. As I get it here, these people walked in with a 5000-share block and then, thereafter, all sorts of things happened, and it is the legal entanglements as a result of that that we are trying to take apart here.

Now, all of this is in relation to the determination to seek control and to disengage thereafter. That's the way it seems to me.

Q What steps did you take to get information as a director of Piper before you stopped purchasing your Piper stock?

A We made phone calls. I called Walter Jamineau, an officer and director of Piper, and I asked him if he would furnish me with information about Piper.

Q What was the result of that conversation?

A He would tell me that he was going to consult with counsel each time and some information he would furnish me and some he wouldn't.

Q Did you ever ask to visit any of the facilities of Piper?

A Yes. I visited the facility at Lockhaven, after a board meeting once, with Mr. Rochlis. We went through that facility. Subsequently I asked if I could visit Vero Beach, and the response to that was to bring an action to remove me as a director.

Q What was at Vero Beach?

A The single engine planes. All their single engine planes, except the single engine Commanche, were made at Vero Beach and there was a lot of inventory there.

Q That was a Piper plane?

A That's right.

THE COURT: When did your efforts end to seek

control of Piper? 1268A

THE WITNESS: It was sometime in 1970, shortly before Mr. Liman stated to the Court that we were only seeking money damages at this point.

THE COURT: In other words, all through 1969 and after the Court of Appeals made its decision in April 1970 and then on until the fall of 1970, it is a fair statement that Chris-Craft was still seeking control of Piper, isn't that so?

THE WITNESS: No.

THE COURT: When did you stop?

THE WITNESS: We didn't stop.

THE COURT: You were seeking control then?

THE WITNESS: No.

THE COURT: When did you end your quest for control?

THE WITNESS: When I just stated, your Honor, just shortly before Mr. Liman stated it.

Q What happened to bring that about?

THE COURT: What was the date that you announced, Mr. Liman? What month was that?

MR. LIMAN: September.

MR. RYAN: September 1970, September 25ht, I believe.

THE COURT: For a year after you found out about Commanche you still wanted control of this company?

THE WITNESS: That is not a fair statement, either, your Honor.

THE COURT: I don't want to be unfair to you. You stopped seeking control in September of 1970, is that right?

THE WITNESS: Yes.

Q What was it that led you to come to the conclusions that were reflected in my statement to the Court in September of 1970?

A During that period, up till then, we were trying to get into or get out, either to get control or get out of our position. By the time you made your statement, it became apparent that virginity could not longer be restored, the company had changed so that there was no way that control could make us whole, that that would not be an adequate remedy for the violations -- that was our claim, that that wouldn't be an adequate remedy for the things that had been done to use by Piper and Bangor Punta and First Boston.

Q Let me move to another subject.

When did you first hear of a plans called the Pegono?

A When I read about it in the Piper annual reports thatIgot in January.

Q Can you tell me whether there came a time -- what was your understanding with respect to this plane up to the time that you stopped your purchases of Piper stock in August of 1969?

A That the plane would be in production in 1970, a plant was being built for it in Lakeland, Florida, it was an 18-place twin engine designed for the commuter market, and that it was a very exciting new project for Piper.

Q Did there come a time when you learned that the project was no longer going forward?

A Yes.

Q When?

A In September.

Q Of what year?

A 1969.

Q Who told you that?

A David Wallace.

Q When? Can you fix the date?

A I think it was September 4th. I am not altogether sure of that.

Q What did he say?

A He said, "Would you believe that these people

have built a plant and they didn't even have the power or the engine for that airplane and they went ahead and built the plant for the Pocono," and that they still didn't have the power and that the plane was so late coming on to the market that it was probably going to have be scrapped, or that it was being scrapped.

MR. PENNOYER: Your Honor, objection. Not binding on Piper.

THE COURT: I will allow it.

Q Prior to this discussion with Mr. Wallace, did you know of the facts set forth in uncontested findings 201 and 202 (handing)?

A No.

MR. LIMAN: May it please the court --

THE COURT: Just a minute. Where do I find those? I want to see what you are talking about.

(Pause.)

THE COURT: I think I have them.

MR. LIMAN: May it please the Court, we have taken by deposition the testimony of the supplier of this engine to Piper as to the status of the engine at various pertinent dates. It is my understanding that the deposition has been signed, or is being signed, and is being returned. At the moment we don't have a signed copy and

there may be some changes.

THE COURT: What point does the deposition establish?

MR. LIMAN: The deposition establishes what I would read to Mr. Gordon and ask him to assume to be the fact, that the engine was an experimental engine, it was a prototype engine, that it was supposed to be 520 horsepower, that it was delivered to Piper finally in June of 1969, that Lycoming told Piper that it would use its best efforts to obtain or make that engine and that it believed that it could make the engine but that it did not guarantee that it could and it did not contract that it could' that it delivered the engine to Piper in June of 1969, at which time Lycoming felt that it made the 520 but that when it was tested on the plane it did not work out to that and that, as a result, the engine --

THE COURT: It doesn't say that at all. It says it is inadvisable to rate it and it is possible to rate it for takeoff, but they would propose a 470 horsepower engine.

MR. LIMAN: The testimony of Mr. Ferris, and I think the other finding concerning what Piper needed, was that it needed a steady horsepower, and a 520 horsepower lift on takeoff was not the engine they needed, they needed

520 continuous rating.

THE COURT: It must then be that this deposition sums to one or two sentences of fact. What are they?

MR. LIMAN: That is what I would propose to read to Mr. Gordon --

THE COURT: Don't read it to him. Tell us here, without prejudice to what you are going to say to Mr. Gordon, what does this deposition show --

MR. LIMAN: That Lycoming only agreed to use its best efforts toproduce such an engine, that the engine was a prototype or experimental engine and that Piper went ahead with the production of a plant in Florida and with the various statements it was making about the Pocono at a time that the engine had not even been delivered, and I want to pose to Mr. Gordon the question as to whether the statements by Mr. Ferris as to what Lycoming had undertaken todo would have affected his judgment.

THE COURT: What is your answer to that?

MR. LIMAN: He has read the whole deposition, your Honor.

MR. PENNOYER: Your Honor, I claim that none of the facts asserted by Mr. Liman are facts, in the first place, and they will not be shown in this record.

THE COURT: Has Mr. Liman accurately in substance

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stated the content of thedeposition?

MR. PENNOYER: No, sir.

THE COURT: All right, that ends the question. Until you get an agreement as to what that deposition says, in simple terms, I don't see how you can pose a question to this witness.

MR. LIMAN: I could read your Honor two or three lines from that deposition.

THE COURT: It seems to me that the lawyers ought to be able to agree on what deposition says. I suppose it is in simple English?

MR. LIMAN: I think it is, your Honor.

THE COURT: What do you say?

MR. PENNOYER: I should have told the Court I was not present but I was told by Mr. Shimer; who was there, what was said, and I was perhaps a little precipitous.

I will ask him to speak to that.

MR. SHIMER: If you wish to hear me, your Honor --

THE COURT: I want a capsule statement.

MR. SHIMER: Lycoming has historically produced engines ~~every~~ Piper used in every aircraft it has. Lycoming has built engines for Piper which it promised to deliver, and it did. Lycoming did promise to deliver the 520 horsepower and did deliver it to Piper. It was building up to 520 in June of 1969, had reached it, but there was some technical problem with the engine which Lycoming felt was inadvisable under certain circumstances.

At that time Piper was continuing to build and to plan for a Pocono engine. It was only after the exchange offer closed and Bangor Punta had four members of the board that the project was scraped, not because of lack of engines, but because of economic downturn. In fact --

THE COURT: This witness doesn't talk about economic downturn, does he?

MR. SHIMER: This witness stops in July of 1969.

THE COURT: I was trying to get an agreement on what the deposition says so that Mr. Liman can ask a question.

At what point in your recital do you end your statement as to what the witness says?

MR. SHIMER: Up until the point where I say Bangor Punta turned it off.

THE COURT: Do you agree with that summary, that that is a summary of the deposition?

MR. LIMAN: I could read -- where I differ from myfriend, Mr. Shimer, is where he says --

THE COURT: We will recess now. I would like to have tomorrow morning an agreed summary on what the deposition says on something that is material to this case.

It is inconceivable to me that two sets of lawyers can't agree on what a deposition has said, leaving it open to me to determine the credibility of it.

MR. LIMAN: I could limit my question to basically a half page of this deposition, which addresses itself precisely to this point.

THE COURT: All right, go ahead and limit yourself.

MR. SHIMER: What page, Mr. Liman?

MR. LIMAN: Page 15.

THE COURT: Assume as a fact . . . that the following which has been stated in a deposition is the fact.

Now read the following.

MR. LIMAN: (Reading)

"Q Did you ever agree to furnish a 520 power normal rated engine?

"A If you are asking do we guarantee something like that, we don't guarantee anything on that order except to furnish our best efforts to arrive at it and usually give an opinion that we see no reason why we can't arrive at it, and that is what goes on during the normal course of an engine development program to get what the customer wants.

"Q But in this case did you agree in writing to use your best efforts to furnish a 520 horsepower normal rated engine?

"A Not in those specific terms. This is a matter of faith between the companies. We say we are going to try to get it and they expect us to get it.

"Q Did you render the opinion that you would be able to achieve the 520 horsepower on the T-10720?

"A Yes."

MR. LIMAN: I think that is a fair summary of Mr. Ferris' testimony, your Honor.

THE COURT: Well, now, what is the question?

MR. LIMAN: The one other part, and this is even shorter, your Honor --

MR. SHIMER: What page, Mr. Liman?

MR. LIMAN: Page 63.

This is at the time this document, referring to a document of the specifications for the engine dated January 8, 1969 --

"Q At the time this document was prepared was the engine described in there an experimental engine?

"A Yes. They are tentative specifications.

"Q Does that indicate it is an experimental engine?

"A Yes.

"Q Is the engine still an experimental engine?

"A Yes."

MR. SHIMER: Will you read the next question and answer?

MR. LIMAN: Yes.

"Q At what time does the engine lose the designation 'experimental'?

"A After it completes the FAA administration type test."

MR. SHIMER: Would you read page 100, beginning on line 20, as to when they type certificate and engine?

MR. LIMAN: Yes.

"Q There have been questions asked of you about

type certification of engines. At what point in time does AVCO Lycoming obtain type certificate for an engine?

"A We generally try to start when we have an agreement with the airframe manufacturer that the engine is in its final configuration and that they are going to start working on their FAA certification, so that once they start doing that then they are reluctant at least to change anything in the engine because they would have to run it over again. In other words, that gives us a pretty good indicator that we have an engine in the configuration that will not be changed while we are running the type tests, or after we run it, so that we will not have to run it again. So generally, at any rate, we start running our type tests at about the same time as the airframe manufacturer starts running his."

THE COURT: What is the question to this witness?

BY MR. LIMAN:

Q Mr. Gordon, you have heard that and you have also read the testimony.

If you had known the facts which I have just read to you would it have affected your judgment with respect to inventing in Piper?

MR. PENNOYER: Objection.

MR. LIMAN: I am asking him to assume them to be

facts.

THE COURT: I will allow the answer, reserving all questions of materiality and relevancy and competence to the close of the case.

Q Assuming those to be the facts.

A Yes.

Q Why?

A Because it casts doubt on a project which I consider to be very important, which Piper had announced as very important to it, cast doubts on the project. Piper announced it was in test flight, which would indicate at least that they had the power for the plane, and they had announced that they were building a plant, which would indicate an even greater certainty, and yet that testimony indicated the engine was experimental and that they are still trying to get that engine to work and haven't done so yet.

Q Mr. Shimer made a statement --

MR. LIMAN: Strike that.

Q Did you or any of the Chris-Craft directors have anything to do with the decision to discontinue the Pocono?

A No.

Q Was there any explanation given to you as a

director as to why the project was discontinued?

A No.

Q Who gave you the explanation and what was said?

A David Wallace.

Q What did he say?

A He said that they couldn't get the power for the engine and now the project was too late anyhow.

THE COURT: What do you mean, too late for what?

THE WITNESS: The market.

THE COURT: You mean the economic downturn had changed the situation?

THE WITNESS: No, it wasn't the economic downturn. The economic downturn -- this was a very low-priced piston engine and the economic downturn might have indicated just the opposite.

THE COURT: Well, what market are you talking about? I thought when you used the term "market" you were talking about --

THE WITNESS: The market for commuter aeroplanes. When there is an economic downturn -- this is a plane to compete with the Beech 99 and in an economic downturn maybe a cheaper plane will be better. I think there are people at Piper who still want to go ahead with the project if they ever get the power.

BY MR. LIMAN:

Q Did Wallace explain why he thought it was too late for thisplane?

A Not specifically. He said that it was too late for the market. That was their judgment and the judgment of the marketing people at Piper.

Q Was there any discussion of the fact of comparative-- of other planes for the commuter market, as to why this one --

A Yes. The other planes had already been sold.

THE COURT: Mr. Gordon, are you familiar with these discoveries that Mr. Nader makes about General Motors cars from time to time?

THE WITNESS: What I read in the newspapers, yes.

THE COURT: And some of those discoveries point up some mechanical troubles in those cars.

THE WITNESS: Yes.

THE COURT: Would you say that every time he points up one of those mechanical troubles on a General Motors car that the non-disclosure of General Motors to its stockholders results in a 10(b)5 fraud?

THE WITNESS: If General Motors is issuing favorable information about a particular model of car,

touting and pushing it in the stock market area, in particular in the financial arena, when they issue favorable information about that and don't disclose unfavorable information, the answer is yes, that would be a material omission.

THE COURT: Anything else, Mr. Liman?

BY MR. LIMAN:

Q Mr. Gordon, after August of 1969, when this change came about in the board of directors, had Piper declared a dividend since August of 1969?

A The last dividend was August 12, 1969.

Q And prior to that did Piper have a dividend policy?

A Yes, $1.35 a year -- $1.40 a year. It was 35 cents a quarter.

Q Has Chris-Craft received since that August dividend a single cent as a return on its Piper investment?

A No.

Q Have you reflected in your financial statements the results of operations of Piper?

A No.

Q Is there some reason for that?

Can you consolidate earnings and losses?

A No.

Q Why?

A Under the rules of the American Institute of Accountants it is not generally accepted accounting practice at this time to report on holdings of minority positions on an equity basis, which would be a consolidation.

Q You mentioned to the Court that you had made some efforts to get out of your Piper position. Have you made any efforts to sell your Piper stock to third parties?

A Yes.

MR. LIMAN: I would like to finish this direct, your Honor, which is another five minutes.

MR. RYAN: What was the pending question, your Honor?

Q Had Chris-Craft made any efforts to sell its Piper position to third parties?

MR. RYAN: Objection, your Honor.

MR. PENNOYER: Objection, your Honor.

THE COURT: He may answer.

A Yes.

Q And would you identify the companies or parties to whom you have made efforts to sell your position?

A North American Rockwell, Northrop Israeli Aircraft.

THE COURT: Would you identify the dates on the proposal, please, in brief?

Q Were there proposals, actual proposals?

A Well, on all of these -- well, North American Rockwell, a broker approached us.

THE COURT: When?

THE WITNESS: In -- I don't remember the date. It was in 1970 or '69. It was after Bangor Punta had control.

THE COURT: Why don't you gather together your recollection of the dates when, and the circumstances, and the proposals involved in your efforts to sell all or any part of your position after you had acquired it?

I suppose the last acquisition was in August, '69?

THE WITNESS: (Nods)

THE COURT: Because the other lawyers will undoubtedly want to examine you on cross-examination, and we will take that information the first thing tomorrow morning.

We will recess now until tomorrow morning at ten o'clock.

(Adjournment taken to March 10, 1971, at 10.00 a.m.)

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CHRIS-CRAFT INDUSTRIES, INC.
vs. 69 Civ 2227
PIPER AIRCRAFT CORPORATION, et al.

BANGOR PUNTA CORPORATION
vs. 69 Civ 2354
CHRIS-CRAFT INDUSTRIES, INC.

S.E.C.
vs. 70 Civ 3940
BANGOR PUNTA CORPORATION.

New York, March 10, 1971;
10.00 A.M.

(Same appearances as before with the exception of the absence of Mr. Kushner.)

Trial resumed.

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MR. RYAN: Your Honor, I spoke to Mr. Liman before court opened and I advised him that Mr. Flick, one of our witnesses, is coming in from Los Angeles Thursday night and I would like to put him on Friday morning, and Mr. Liman indicated that would be agreeable, and Mr. Wallace, another witness, the president of the company, I would like to put on Monday, and Mr. Liman indicated that was all right.

THE COURT: Off the record.

(Discussion off the record.

C. LEONARD GORDON, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. LIMAN:

Q Mr. Gordon, at the close of yesterday's session you were asked to detail the efforts that Chris-Craft had made to dispose of its minority position in Piper. I would ask you to start chronologically and to describe the efforts in which you participated.

A Starting when?

Q Starting with the earliest date after May 8, 1969, that you made efforts to dispose of your position.

A The first efforts we made to dispose of our position were to Bangor Punta.

Q After those efforts, what was your next effort with respect to a third party?

A It was not after those; those efforts were continuing all during the period, up to the present. The first time with a third party, that I recollect after May 8 -- I made notes. May I look at them?

Q Yes, you can, and we will mark them for identification after you finish referring to them.

A It was in September.

Q Of what year?

A Of 1969. We met with George Scharfenberg of

City Investing. That was a meeting attended by David Wallace, Herbert Siegel, David Baird, George Scharfenberg, and myself, and Mr. Scharfenberg offered to finance either party to take out the other and Bangor Punta said they would not sell under any circumstances, they were not prepared to buy and they would only sell their position at their cost.

We were not offered a package for our securities separately; Mr. Scharfenberg would only be interested in both positions.

The next meeting with a third party that I attended was, I believe, in October, and then again in November, with representatives of Israel Aircraft, Kenny Bialkin was general counsel -- I don't know if he was general counsel, but he is a partner in Dewey Ballantine --

Q Willkie Farr?

A Willkie Farr, excuse me. I had discussed the possibility of doing something with Israel Aircraft with Kenny very generally in the summer, the first --

Q The first meetings were when, in November?

A Yes.

Q What was the substance of those?

A They would be interested in buying Piper Aircraft.

Q Your position?

A Both positions, ours and Bangor's.

Q Yours alone?

A No. We had a number of meetings with Israel Aircraft and we talked to Bangor about it at a later date.

Q Next?

A I show a June 24 date.

Q 1970?

A That must have been 1970. That must have been the subsequent meeting with Israel Aircraft and Al Schwinner.

Q Who is Al Schwimmer?

A The president of Israel Aircraft.

Q Next? Are you going chronologically or by company?

A I am trying to go chronologically by company. My notes are sort of scattered.

In January --

Q Of '70?

A Of 1970 -- the broker, Ralph Raener, approached me and told me that North American Rockwell would be interested in buying our position and Bangor's position; they would not be interested in buying ours alone. I immediately informed David Wallace and we had a meeting -- I show Suite 305-306, and I think that was the St. Regis Hotel, with a vice-president of North American Rockwell.

Q Who is the broker?

A Ralph Riener, R-i-e-n-e-r.

Q There is a question --

A The next --

Q -- from Piper's counsel for you to identify the vice-president of North American Rockwell, if you recall his name.

A I don't recall his name, and I didn't -- I think it is -- I think I could find that name, or David Wallace would know it.

MR. LIMAN: We will provide the name in the first recess.

THE WITNESS: I didn't have it. I don't have it here.

Q You don't have it?

A And I don't remember it. There were two men from North American Rockwell, I believe. We met with -- I met with a Mr. Stevens of Northrup on March 16th.

Q 1970?

A Yes. He expressed an interest in purchasing Piper Aircraft but only if he could get both our position and Bangor's position, and we talked around and finally told him to talk to David Wallace first, because that was -- we told him that would be the hard half of the deal, [illegible]rds to

that effect.

In January -- my notes didn't -- my records didn't fix this. This is from my memory.

Q Again, what year?

A 1970. I got a call from the -- an investment banker at Dillon, Read, who told me-- he was speaking for Grumman, that they would be interested in buying our position if they could buy the Bangor position at the same time. His price was 'way below what Bangor would be willing to pay. I think it was $20 or $30 a share.

Q Next?

THE COURT: You said his price would be 'way below what Bangor would be willing to pay?

THE WITNESS: Yes -- would be willing to take.

THE COURT: What was Bangor willing to take, according to what they said?

Q What did Bangor --

A Bangor had expressed to North American Rockwell that they would be willing to take their cost at that point in time.

Q Had they ever expressed that to you?

A They would sell to me at their cost?

Q No. Were you present when they expressed that?

A Yes.

Q All right. I just wanted to --

THE COURT: What was the cost, approximately, per share?

THE WITNESS: On their books -- this is a stipulated fact -- I think it was per share, their cost was in the 70's, the high 70's, I think. I dont recall it offhand.

Q When they said their cost, was it book cost?

A Book cost. I was told --

Q I want to know: when you say you were told, I was asking you at this point for efforts that you participated in.

A That's all --

Q Now --

A -- that I remember.

Q Now, was someone else at Chris-Craft participating in any efforts to dispose of the position?

A Yes.

Q Who?

A Mr. Siegel.

Q And I believe Mr. Siegel's efforts will come out in his appearance on the stand.

MR. Gordon, did you at any time discuss with your investment bankers the possibility of selling your position?

A Yes.

Q When?

A Apparently by January of 1970 I had. I think we discussed it prior to that, too. January, '70, sticks in my mind, because that is when I talked to Armond Erpf about it, and he told me that he was making attempts -- that he would be making attempts to sell it to Mitsubishi. By "it" I mean, again, the whole package. It was his opinion that our portion was unsalable.

Q When did he express that opinion to you for the first time?

MR.RYAN: Objection.

MR. PENNOYER: Objection.

MR. RYAN: I would also like to point out to the Court that Armond Erpf is dead.

THE COURT: Strike it out. Objection sustained.

Q Mr.Gordon, as a result of all your efforts, did you find a buyer who was willing to take your position alone?

A No.

Q Now, you have testified that a number of people said that they were not willing to take yours alone but that they would take both. Was --

A Well, the answer -- my last answer is incorrect. There is a buyer who would be -- Bangor Punta would be willing to take our position alone.

Q Anybody other than Bangor Punta?

A No.

Q And was there ever any explanation given by any of these buyers or any explanation of this as to why only Bangor Punta was willing to buy?

A By any of these people we were talking to?

Q Yes.

A Not that I recall.

THE COURT: How had you carried this interest on your books and accounts? At what value?

THE WITNESS: Our books -- at our cost.

THE COURT: Has there been any footnoting to indicate that that is not actual value?

THE WITNESS: Yes.

THE COURT: What does the footnote say, in substance?

THE WITNESS: The footnote says in substance that the investment is carried at cost, that there is litigation in which we are seeking money damages, which we expect to compensate us for -- I forget exactly how it is phrased, but the import is any lessening of the carrying value that has resulted from the -- that has resulted --

Q Is it in substance that your footnote -- we can produce it -- says that it is carried at book, subject to

the litigation to make up the difference?

A Why don't I get the footnote?

MR. LIMAN: Do we have it here?

THE COURT: Certainly, the litigation is not going to increase your cost. That is not designed to increase your cost, is it?

THE WITNESS: No.

MR. LIMAN: It is qualifying cost.

THE WITNESS: This is our expense, not our cost.

Q I show you the 1970 annual report of Chris-Craft and ask you to find the reference.

THE COURT: While we are at it, let's have the '69 notations, if any.

THE WITNESS: The investment is carried at --

Q Are you reading?

A The investment is carried at $46,000,000, and the footnote states:

"Investment in Piper Aircraft Corporation in May, 1969. The company brought suit in the United States District Court for the Southern District of New York against Bangor Punta Corporation, Piper Aircraft Corporation, the First Boston Corporation and certain individuals, alleging violations of the securities laws and seeking substantial money damages. In April, 1970, the United States Court of Appeals in New

York held that Bangor Punta and Piper had violated certain provisions of the securities laws and remanded the suit to the District Court to determine an appropriate remedy. In the opinion of management, the company has, as a result of the actions of the above-mentioned defendants, suffered substantial injury in connection with its investment in Piper, which is carried at the company's cost of $46,000,000, in the accompanying balance sheet. Management and special counsel for the company believe that the company has a meritorious claim for damages to remedy the injury. However, the outcome of litigation can never be determined in advance, and pending a final determination by the Court, the company is not in a position to determine if a reduction in the carrying value of this investment is required."

Then I refer to the Bangor Punta countersuit there, and our accountants -- auditors' report was subject to the -- in our opinion subject to the effect of any adjustment to the carrying value of the investment in Piper Aircraft that may result from the matter discussed in Note 9.

THE COURT: That means that until this suit is completed you can't tell whether the actual value is $46,000,000 or not? Is that what you mean?

THE WITNESS: Yes.

Q Why?

A Because we were injured by the defendants in this lawsuit.

Q But what is it that --

MR. PENNOYER: Objection.

Q Are you saying, Mr. Gordon, that the lawsuit can add to your cost? You are carrying it at cost?

A No. You normally carry an investment like this at cost. You would not change the value of the investment unless it's permanently impaired.

Q What was the reduction that you were talking about or possible adjustment, the language you read?

MR. PENNOYER: Objection.

THE COURT: I will take it.

A It would be an adjustment to the value, the present value of the 41 or 42 per cent position that we have in Piper, and we would have to estimate what that was.

Q As a director of Piper, you received various reports on the financial condition of Piper?

A Yes.

Q Yesterday, I asked you, at page 186, referring to the statement that in September of 1970 we were seeking damages:

"What was it that led you to come to the conclusions that were reflected in my statement to the Court in September

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of 1970?

"A During that period, up till then, we were trying to get into or get out, either to get control or get out of our position. By the time you made your statement, it became apparent that virginity could not longer be restored, the company had changed so that there was no way that control could make us whole, that that would not be an adequate remedy for the violations -- that was our claim, that that wouldn't be an adequate remedy for the things that had been done to us by Piper and Bangor Punta and First Boston."

THE COURT: What page?

MR. LIMAN: Page 186, your Honor.

Q (Continuing) What changes in the company were you referring to?

A There was a change in management. A new president was brought in. Mr. Piper was terminated as the principal executive officer. I think he's the chairman of the board now. The company's share of the market has declined.

Q Share of what market?

A Light aircraft market. The company's financial position has deteriorated. The company has been losing money every month this year, lost money last year. Neither Beech nor Cessna lost money. It's a different company, differently structured. They have entered into the military

market.

MR. LIMAN: I would mark for identification as Exhibit 36 the Piper 10K for the fiscal year ended September 30, 1968.

As Exhibit 37 for identification, Piper's unaudited financial statement as of March 31, 1968.

As Exhibit 38 for identification, Piper's unaudited financials as of June 30, 1969.

As Exhibit 39 for identification, Piper's 10K for September, 1969.

Q Are you familiar with these documents?

A Yes; I am.

Q And have you read them?

A Yes.

Q Can you identify them as the documents which I have described?

A Yes.

MR. LIMAN: I have no further questions.

CROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Gordon, focusing your attention to January, 1969, as I understand it, there was in Chris-Craft an investment committee consisting of yourself, Mr. Siegel and Mr. Rocklis at that time?

A No, I was not a member of the executive committee.

Q No, I said an investment committee.

A That's right. You misdescribed it. It consisted of Mr. Sherill, Mr. Siegel and Mr. Rocklis. You said I was a member of it and I was not.

Q You were not on that?

A No.

Q As of that time and up through February 3rd, which was the closing date of your cash tender offer, had you had any experience in aircraft manufacturing, Mr. Gordon?

A No, sir.

Q How about Mr. Siegel?

A No.

Q Mr. Rocklis?

A No.

Q Mr. Sherill was an outside director?

A Yes.

Q As I understand it, Mr. Siegel made the decision in late December of 1968 to buy Piper on the open market, is that correct?

A Yes.

Q Did he consult with you about that decision,or his decision to purchase shares?

A At or about that time, yes.

Q Did he ask you to do anything, to make any studies?

A No.

Q I think it is an agreed finding that between December 30 and January 18, approximately, Chris-Craft bought approximately 101,000 shares on the open market and that between the 18th and the 27th Chris-Craft bought another approximate 100,000 shares from Technology Fund, is --

MR. LIMAN: That is approximate except that the Technology Fund purchase was consummated on the 23rd and made on the 22nd.

MR. PENNOYER: All right.

Q Now, sir, up through the Technology Fund purchase, Chris-Craft had invested about $11 million in Piper stock, had it not?

A I will take that figure without doing a calculation.

Q Then you made a decision to go ahead with the cash tender offer on or about the 22nd?

A Thatb right.

Q And that involved, at $65 a share, for 300,000 shares, a total of approximately another what, about $20 million?

A Yes.

Q So thatthe total of allthose transactions involved something in excess of $30 million, is that correct?

A Yes.

Q Between the time that Mr. Siegel told you he was going to or intended to buy Piper stock on the open market and February 3, the closing date of your cash tender offer, what studies, if any, did you make of the aircraft manufacturing business, and, specifically, of Piper's products?

A I read the annual reports of Piper, I read all of the information that was on file at the New York Stock Exchange about Piper. I had read some of the magazines about Piper's products.

Q What magazines?

A Well, I had read magazines that were available on the newsstands. I would pick them up when I was traveling and look at them.

I read --

Q Can you identify any of those magazines?

A Some aviation magazines, Aviation & Flying had adds for Piper, Business & Commercial Aviation I had seen, which had the Pocono on the cover. That's about it.

Q It was Mr. Rocklis' job, as I understand it, in Chris-Craft, to collect information about other companies, is that correct?

A Yes.

Q And he had some information about Piper, amongst other companies, in his files, did he not?

A Yes.

Q Did you check that information?

A I think the annual reports I looked at came from his files.

Q Anything else that you recall at this time?

A No.

Q Did you, other than the annual reports, check anything from Mr. Rocklis' files about Piper?

A No.

Q Isn't it correct that up to the close of your cash tender offer you consulted with no independent expert in the field of aircraft manufacture?

A Yes.

Q And, in fact, you consulted with no outsiders who were expert in that field?

A Yes.

Q Did you write any memos, notes about Piper's products up through the close of your cash tender offer?

A No.

Q Any writings whatsoever?

MR. LIMAN: I objectto the form. Any writings on what?

MR. PENNOYER: Of any kind, about Piper's produces.

A Unless you want to call underlinings or marks on Piper's own documents, no.

Q Did you see any such memos or reports from anybody in Chris-Craft prior to the cash tender offer -- prior to the cash tender offer, to the termination of the cash tender offer?

A No.

Q Did you get any memos or reports from Shields & Company?

MR. LIMAN: Written reports, you are referring to?

MR. PENNOYER: Yes.

A With respect to Piper's products?

Q Yes.

A No.

Q Or Loeb, Rhoades?

A No.

Q As of the close of your cash tender offer would you say you had a pretty good knowledge about Piper's products?

A It depends on how you define "pretty good."

Q Well, what did you know about the products at that time?

A I knew that they made three twins, I knew that they -- at the end of the cash tender offer?

Q Yes.

A They were coming out with a pressured Navajo, they were coming out with a Pocono, coming out with a new version of the twin Commanche, they made the agricultural plane and the Supercub, and a variety of single-engine planes that they --

Q Did they -- did you finish? I didn't mean to cut you off.

A I knew all the information that was set forth in Piper's annual reports about their products.

Q Did you believe at that time that Piper made military aircraft?

A Did I believe that it made military aircraft?

Q Yes.

A No, not as such. I believe they had military sales.

Q Did you believe at that time that Piper made the Pocono?

A Yes. I saw a picture of it flying on the cover of Business & Commercial Aviation -- they at least made that one.

Q Is this an affidavit signed by you, Mr. Gordon, on January 31, 1969, in the Eastern District antitrust action brought by Chris-Craft against Grumman and Piper (handing)?

A Yes.

Q Did you say in that affidavit as follows:

"Grumman competes with Piper in the production and sale of general civilian aviation aircraft, agricultural aircraft, military aircraft and component parts for general aviation and military aircraft"?

Did you make that statement?

A Yes.

Q Under oath, sir?

A Yes.

Q And that was not correct, was it?

A It certainly was correct.

Q Did Piper at that time make military aircraft?

A It makes aircraft for sale to military, yes. I take it when they buy it it is military aircraft.

Q Is that your opinion today, that when you sell a utility airplane to the military, it is a military aircraft?

A It is my opinion that describes Piper's business. If it were important to differentiate between an airplane sold to the military -- Piper itself refers to sales to the military in its own reports, and this was an affidavit taken from Piper's own information.

Q Where in Piper's reports -- and you have them attached to the affidavit -- does it say that Piper sells military aircraft?

A It talks about its sales to the military. It will take me a while to find it. I know that it is in here.

(Pause)

MR. LIMAN: Could I shorten it, Mr. Pennoyer, by referring him to something?

MR. PENNOYER: Yes, you may.

MR. LIMAN: Page 9 -- I don't know if this is what he was referring to -- is the SEC designation of page 9 of the 1968 annual report. It is the page where they list sales volume.

A Yes, sales dollar volume, military is listed as one of the three major headings of sales dollar volume.

Q Does that say anything about military aircraft?

A No -- just a minute, let me get the page here. It says military, prime and subcontract.

Q And you agree that it doesn't say military aircraft does it?

A It may be referring to the sale -- I know they had sales to the military. They sold to both foreign and domestic military armies.

Q And in terms of the amount, it is $59,000?

A Right.

Q In 1968?

A Yes.

Q Out of a total sale of commercial planes of $89 million, roughly?

A Yes.

MR. LIMAN: Out of a total sales, as I see it, of $96 million.

MR. PENNOYER: All right, $96 million.

Q Did you say in the same affidavit submitted to the federal court in Brooklyn:

"Piper manufactures aircraft for the same purpose, including the 18-passenger Pocono"? Did you make that statement under oath?

A Yes.

Q And it did not then manufacture the Pocono, did it?

A It had made some. It was not in commercial manufacture. They had one flying.

Q Prior to February 3 had you seen Defendant Piper's K for identification?

MR. LIMAN: Can you --

MR. PENNOYER: This is the Forbes 1968.

MR. LIMAN: The Forbes article?

MR. PENNOYER: Yes.

A I don't recall having seen it prior to February 3rd.

Q Do you know whether that was in Mr. Rocklis' file on Piper?

A Yes, it was.

Q Did you read it?

A I have read it since. I don't really recall whether I read it before that. No, I don't think I did.

Q Would you agree that it states, in substance, in the heading:

"Always Late. Piper Navajo (top) with a picture -- the business plane came out two years after Cessna's 411. Piper Pocono, a commuter airliner, will be two years behind Beech's 99."

Do you agree that is what it says, sir?

A Yes.

Q And down here, in the right bottom column --

MR. LIMAN: Are you reading from the right bottom column?

MR. PENNOYER: Yes. I am just trying to find the place.

MR. LIMAN: I will find it for you -- is this what you are referring to (indicating)? The witness can have a copy (handing).

Q Refer a minute now to Defendant's Exhibit J for identification. That is Aviation Week & Space Technology, November 4, 1968.

MR. LIMAN: That is Exhibit J.

What was the Forbes article?

MR. PENNOYER: November 1, 1968.

MR. LIMAN: K?

MR. PENNOYER: K.

Q Looking at Defendant's Exhibit J, did you see that before February 3, 1969?

A No.

Q And that, would you agree, is a publicly distributed magazine?

A What was the magazine?

Q The magazine is called Aviation Week & Space Technology.

A Yes.

Q Available on the stands?

A Yes.

MR. PENNOYER: I offer in evidence Defendant's Exhibit J for identification.

I believe that the other one is already --

MR. LIMAN: K is not in.

MR. PENNOYER: All right, I will offer Defendant's Exhibit J for identification and Defendant's Exhibit K for identification into evidence.

MR.LIMAN: No objection.

Your Honor, there are parts of this that will be called to your attention and I don't know when is the best time to do it.

(Defendant's Exhibit J for identification received in evidence.)

(Defendant's Exhibit K for identification received in evidence.)

MR. PENNOYER: I might say there are parts of K that are quoted in some of the findings.

THE COURT: Mr. Pennoyer, could you suspend for a moment.

There is somebody here on an order to show cause who needs immediate relief.

(Pause)

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MR. PENNOYER: I would like to read one short sentence from the Forbes magazine article of November 1, 1968, quoting Mr. W. T. Piper, Jr., as follows:

"We haven't yet decided on a couple of points, such as whether to use turbo-prop engines."

That relates to the Pocono.

MR.LIMAN: I would like to read the preceding sentence, your Honor:

"Piper's commuter craft, the 16-passenger Pocono, is already flying, but deliveries won't begin until mid-1970, more than a year later than originally announced. I don't think we are late into the market, says Piper. There will be a high demand for many years."

THE COURT: Is anybody trying to persuade me that Chris-Craft did any more than consider this thing as a financial opportunity, without regard to who Piper was or what it was?

Is that the thrust of anybody's proof here?

MR. PENNOYER: Yes. This relates to the testimony yesterday about certain promises or representations made with respect to the Pocono and alleging reliance thereon.

THE COURT: You don't mean "yes." What you are saying to me is that the context of the investment here was one strictly on a financial speculation rather than on a commercial interest in the manufacturing processes and results of manufacture.

Isn't that what you are saying?

MR. PENNOYER: Yes, that is correct, your Honor.

THE COURT: I don't think that changes anything under the securities laws, but I think I understand the context of what you are saying.

MR. PENNOYER: Our position, if I may state it, is that they bought 540,000 shares for in excess of $30 million without checking anything.

MR. LIMAN: Your Honor doesn't want to hear argument on this subject but these were annual reports and published statements made by Piper.

MR. PENNOYER: I would like to read one very brief statement from the November 4, 1968, edition of Aviation Week and Space Technology, which is Defendant's Exhibit J now in evidence.

"Flight testing of the prototype Piper PA-38 twin engine commuter airliner has shown a need for increased engine horsepower and redesign of

the wing fillip to meet the performance specifications."

MR. LIMAN: Would you read the sentence:

"Type 2 testing of the improved engines by Lycoming has been completed and delivery is expected by next spring for installation on a prototype PA-35."

BY MR. PENNOYER:

Q Now, Mr. Gordon, I believe you testified yesterday that you attended the annual meeting of Piper on February 4, 1969.

A Yes.

Q Do you recall that testimony?

A Yes.

Q I want to read an answer you gave yesterday regarding certain statements made at that meeting.

"Q And do you recall whether it was discussed and by whom?

"A Mr. Piper discussed the business of the company in favorable terms. He discussed the Navajo and the pressurized Navajo, which was their new product coming on. It was a very important development, because it was --

"Q Is that what he said?

"A Yes.

"Q It's not clear to me whether you are --

"A Yes. He said there was an important development, that it was a business airplane. And then Howard Piper, his brother, discussed the Pocono. I think it might have been built; I think it was Howard, though, discussed Pocono, which was the new 18-place commuter airplane, which they said was being tested, and with the introduction they were building a plant in Lakeland, Florida, and the Pocono would be in proeuction next year."

Now, sir, did you know that the statements at that meeting were transcribed by a reporter?

A Yes.

Q And have you since looked at a transcription of that meeting?

A Yes.

Q And did Mr. Howard Piper say at any time that the Pocono would be in production next year?

A I believe he said it. It was my recollection that he did, yes.

Q First of all, sir, is Defendant's Exhibit L for identification a transcript of the proceedings at the February 4, 1969, annual meeting?

MR. LIMAN: We will stipulate that this was produced yesterday afternoon, correct?

MR. PENNOYER: Yes, sir. I offered it in evidence.

MR. LIMAN: As being a full transcript, is that right?

MR. PENNOYER: Yes.

MR. LIMAN: Have you satisfied yourself of that?

I don't know whether it is or it isn't, Mr. Pennoyer.

MR. PENNOYER: Well, it is a problem of elimination. If I have to read the whole thing into the record, it is going to take too long. The witness has indicated he said --

MR. LIMAN: No. Are you satisfied that this is a full transcript of the meeting of that date or that it was something else?

I don't know. I asked for it and we got it yesterday.

MR. PENNOYER: Mr. Shimer informed me that it is.

MR. LIMAN: If you are satisfied and make the representation, I will have no objection.

MR. SHIMER: These were the minutes taken at the annual meeting on February 4, 1969.

MR. PENNOYER: I offer Defendant's Exhibit L for identification in evidence.

I gather there is no objection.

MR. LIMAN: On that representation, there is no objection.

(Defendant's Exhibit L for identification received in evidence.)

BY MR. PENNOYER:

Q Now I show you page 11 of this transcript, Defendant's Exhibit L, Mr. Gordon, and I will read to you as follows a statement by Howard Piper regarding the Pocono:

"The third major project is the D-85 Pocono, which is our 18-place commuter and cargo-type aircraft, being developed in Vero Beach for production in the new plant which is being started in Lakeland right now. This Pocono is planned to be available in some of the versions starting with a relatively low-priced piston engine powered model using 520 horsepower Lycomings. Later models will be stretched and will use turbines. This airplane, like the rest of our models, will

be designed for considerable growth."

And then he goes on. He agreed to speak about the Arrow, which is another product.

Now in what I have read did Mr. Howard Piper say anything to the effect that the Pocono would be in production next year?

MR. LIMAN: You are asking him for the way he interpreted it because the document obvicusly speaks for itself.

MR. PENNOYER: Yes.

THE COURT: Is there anything other than what you have just heard that led you to believe that the Pocono would be in production?

THE WITNESS: Yes.

THE COURT: In other words, what has just been read didn't lead you to that conclusion? It was something else, is that right?

THE WITNESS: Obviously not. It is not in there.

THE COURT: You mean obviously so?

THE WITNESS: Yes. Obviously so. I started from a different point.

Q Will you look --

MR. LIMAN: Can we stipulate that the reference to D-85 Pocono is an inaccuracy, and it is P-35, I believe, so to that extent it is not an accurate transcript?

THE COURT: Well, whether it is an accurate transcript or not, it doesn't bear on the point that we are talking about. If it was described with two shoelaces instead of one shoelace, it doesn't mean the shoe was there. He says it's something else, not this.

Q Mr. Gordon, I am going to ask you, over the lunch hour --

MR. PENNOYER: Could we take a five-minute break, and I will ask the witness in the meanwhile to examine this transcript of the proceedings of the annual meeting and tell me what it said in there, in substance or in fact, that the Pocono will be in production next year.

THE COURT: Mr. Gordon has already told you that he read the transcript. He has already told you that the passage that you read was not the documentation for the position that he mentioned in his direct examination.

Is there anything else that you recall from what you have read contained in the transcript that documents your point?

THE WITNESS: No.

THE COURT: All right.

Q Now, Mr. Gordon, as I understand it, the first suggestion that Chris-Craft might make a cash tender offer was made by you in a telephone call from the Bronx Zoo to Mr. Siegel; is that correct?

MR. LIMAN: Could I hear the question?

A No. First of all,it was the Central Park Zoo.

Q I am sorry.

MR. LIMAN: It's a long walk.

A It's a long, long walk from the Bronx Zoo. Second, that was my suggestion -- my suggestion at that point in time was for a tender offer with proxies. We had discussed the possibility of a tender offer the night before.

Q That is, a cash tender offer?

A Yes.

THE COURT: Did any animal there suggest the tender offer?

THE WITNESS: Yes. The elephant. We had done it before.

Q As I understand it, you had expected the Technology Fund representatives in that day, and there was the possibility that you might be able to pick up their 110,000 shares?

A It was 100,000 shares.

Q Well, 100,000, whatever the exact number is.

A Yes.

Q And that is what generated the thought in your mind at that time?

A Yes.

Q Now, on or about January 23rd, you did buy the Technology Fund shares, and then you entered into discussions within the company with respect to making a cash tender offer; is that correct?

A On which day? On the 23rd?

Q Well, on or about January 22nd or 23rd.

A On the 22nd, we agreed to buy the Technology shares.

Q Right.

A And we started the discussions in earnest on the cash tender offer that very day.

Q And in fact, the cash tender offer was for a maximum of 300,000 shares?

A With the right of overage, yes.

Q With the right of overage. But the maximum stated --

A It wasn't a maximum. It was 300,000, with the right of overage. The word "maximum" is your word, I think.

Q Now, did you discuss the reason for limiting the offer to 300,000 shares of Piper?

A Yes.

Q And was one of the reasons the fact that you didn't have enough cash or readily liquidable assets to buy 51 per cent of the Piper stock?

A At that point in time?

Q Yes.

A In hand?

Q Yes.

A Yes.

Q And what other reason was there for picking the figure of 300,000 shares?

A It was th- figure best calculated in our thinking to bring in a majority of the -- to bring in enough shares to give us the majority of the shares of Piper.

Q Well, in order to get a majority you needed, after the Tech Fund shares came in, you needed about 500,000 shares or 550,000 shares; is that correct?

A It would be more than that.

MR. SHIMER: 620.

A 620.

Q 620. Now, are you stating to the Court that by offering the 300,000 you thought the 600,000 or more would come in?

A More likely than if we asked for 600,000, yes.

Q And what was your reason there?

A People would tender more shares if they thought they were going to get their shares off, if they thought that the tenderor was going to purchase. If we saw the shares coming, in, we could always announce that we would take all the shares that would come in, and then they would -- the balance would come.

Q Is it your testimony that your intention at that time, on January 23rd, when you first announced the cash tender offer, was to acquire a majority of the Piper shares?

A That was one of our purposes, yes.

Q Was that your intention at that time?

A It was my hope.

Q Your hope. Your intention, sir?

A I had several intentions.

Q And they were what?

A My intention was to buy shares of Piper stock -- not my intention, the company's intention was to buy shares of Piper stock, to try to get a majority. We didn't want to foreclose ourselves from selling our shares if we were unable to get a majority by stating that as our sole intention.

Q On the 23rd you did publish the tender offer; isn't that correct?

A Yes.

Q Now, prior to the 23rd, did you receive and review a draft of an offer to purchase 300,000 shares of stock of

Piper Aircraft Corporation by Chris-Craft Industries, marked for identification as Defendant's Exhibit D?

MR. LIMAN: Is that one that we marked yesterday, with a plaintiff's number?

MR. PENNOYER: I don't know.

Q (Continuing) Was Exhibit D prepared by Cravath?

A Yes.

Q And reviewed by you?

A Yes.

Q And similarly --

MR. LIMAN: Can I see mine, so I can follow you? If you are marking things that we have already marked --

Could you describe what the document is that you are showing him, so I can follow it?

MR. PENNOYER: Yes.

Q Subsequently, you filed a copy or a form of offer to purchase the same shares by Chris-Craft with the SEC; correct, sir?

A Yes.

Q And that is dated January 23, 1967?

A Yes.

MR. LIMAN: What number are you showing him now?

Q Is the document I am showing you a copy of what you filed with the SEC, that is, the offer?

A Yes.

MR. PENNOYER: A copy of the newspaper article, that is, an offer appearing in The New York Times.

Q Is that a copy of Chris-Craft's offer for 300,000 shares of Piper?

A Yes.

MR. PENNOYER: I will attach The New York Times article, which has Defendant's Exhibit E for identification already stapled to it, and I will attach to the form of offer filed with the SEC, as testified by the witness, and I will offer in evidence now at this point Defendant's Exhibits D and E.

MR. LIMAN: May I see them, in that form?

THE COURT: What point are you attempting to develop here, Mr. Pennoyer, that is not covered by the agreed facts?

MR. PENNOYER: My point is, your Honor, it has been covered, but we get into questions of -- well, questions of credibility, which I think are important.

THE COURT: Well, what proposed finding of fact which was not accepted are you attempting to establish?

MR. PENNOYER: The proposed finding we did not accept was that Chris-Craft --

THE COURT: Have you got a number?

MR. PENNOYER: Yes. It is No. 148(a), proposed by Piper, and it's Paragraph 6, the last two sentences of the paragraph.

THE COURT: All right. Go ahead.

You see, it would be useful for you to tie in with me your progress as you go along, so that I don't have a lot of scattered information, to channel my attention to a number of these items that you are trying to prove. I can listen then to the testimony and react to it with something definite rather than to do it some weeks or months from now.

MR. PENNOYER: Yes. I understand. I will try to do that, your Honor, after this. I haven't got my preparation worked out to point out the particular finding I am concerned with in ahy question or series of questions. I will try to do that as soon as I get a chance.

I now offer Defendant's Exhibit E and Defendant's Exhibit D in evidence, and I would make a note as to E, that there are certain pencil marks on the upper margin of the page. This is the newspaper offer, and I do not intend to offer and will remove those references.

MR. LIMAN: No objection to either exhibit.

(Defendants' Exhibits D and E for identification received in evidence.)

MR. LIMAN: I will look at them when you are through.

Q Mr. Gordon, referring to Defendant's Exhibit D, which I understand is the draft prepared by the Cravath firm, which was reviewed by you, I will ask you to look at page 8, which reads as follows:

"Chris-Craft intends through this offer to acquire control of Piper."

You agree that is what the draft offer says?

A May I see it?

Q Yes.

A Where are we reading, sir?

Q At the top.

A Yes.

Q And as finally cleared by your company, will you agree that the item reads as follows:

"Chris-Craft is purchasing the Piper shares for investment with a view to control of Piper but does not presently have any specific plan or proposal to liquidate Piper or to acquire control of Piper"?

A Yes.

Q And that offer I read from was actually the form filed with the SEC, that is, Exhibit E, the second document attached to it?

A Yes.

Q And you agree that the newspaper version read the same way?

A Yes.

Q And will you agree that the Form 13-D filed by Chris-Craft read the same way?

A Yes.

Q And was what I have read a fair description of Chris-Craft's intention throughout the period of the exchange offer?

MR. SHIMER: Mr. Pennoyer, you misspoke. The tender offer.

Q (Continuing) I am sorry.

The tender offer?

A Yes.

Q Now, you testified yesterday concerning funds available for the cash tender offer as of the 23rd, and I believe you made reference to the proceeds of the debenture offering made in December of 1968. Do you recall that?

A Yes.

Q And that was approximately $26,000,000?

A Yes.

Q And I believe you also testified that Mr. Siegel arranged for a bank loan from the Philadelphia Bank, I

believe in the amount of $15,000,000. Do you recall that testimony?

A Yes.

Q And would it refresh your recollection if I suggested to you that Mr. Siegel made those arrangements in the middle of January, around the 15th, and not during the course of the tender offer?

A Yes.

Q So that, as of January 23rd --

A No. Wait a moment. January 15th Mr. Siegel made those arrangements?

Q Yes.

A No.

Q Is it your understanding now that he made the arrangements for the Philadelphia Bank loan -- and I am not talking about the actual including of Chris-Craft in the funds, but I mean the agreement for the loan during the period of the cash tender offer?

A Yes. I thought you were referring to that. I'm sorry. I thought you were referring to the middle of the cash tender offer.

Q Now, Chris-Craft had in effect at times a certain agreement relating to senior noteholders, did it not?

A Yes.

Q And one of the provisions of the agreement provided that Chris-Craft would not have any unsecured current debt for bank loans in an aggregate amount not exceeding $15,000,000?

A I think he stated that -- it provided that we could have unsecured bank loans in an amount not exceeding $15,000,000. You've got two negatives in your statement. I didn't understand what you were saying.

MR. PENNOYER: Did I have two negatives?

Q And the $15,000,000 loan from the Philadelphia Bank was, or would be, such an unsecured loan?

A Yes.

Q And without getting waivers or commission from the senior noteholders, you could not, as of the time of the cash tender offer, have secured additional indebtedness from banks of an unsecured nature, could you?

A Short-term money beyond $15,000,000?

Q Right.

A That's correct.

Q Did you go to your senior noteholders at any time during the period of the cash tender offer to get their consent, waiver, permission to take down further loans than the $15,000,000 already agreed upon from the Philadelphia Bank?

A No.

Q During the time the cash tender offer was open, the announcement of the Grumman agreement came out, January 29, correct, sir?

A Yes.

Q Up until that announcement do you recall now how many shares of Paper had been tendered to Chris-Craft?

A No. Is that a stipulated fact?

Q No, we don't have a schedule of dates --

A A large number came in at the end.

Q At the end?

A Yes.

Q Can you give us an approximate figure as to the percentage of the total number that came in that might have been in by January 28, the day before the Grumman announcement?

A I don't have the number. Generally most of your shares come in at the end in a tender offer. So I would assume it was a small amount.

Q When you say "most," can you give us some general percentage figures of the shares that came in at the end of the tender offer?

MR. LIMAN: He was testifying as to generally before. Is this specific now?

MR. PENNOYER: Yes, in this case. My question relates to this cash tender offer.

Q Can you give us an approximate figure as to the percentage of shares that came in after January 29?

A No, except to say it was a large number.

Q Do you have that information available in the company?

A I believe so.

Q The day the Grumman transaction was announced,

the marketprice of Piper stock fell, did it not?

A Yes.

Q Do you recall now how much?

A No. I think that is a stipulated fact, though, isn't it?

Q It is. If I suggest it dropped to approximately 60 from 64, would that accord with your recollection at this time?

A Yes.

Q Did you as a result of the Grumman announcement become concerned that you were going to get the whole of the Piper Company dumped in your lap?

A Yes.

Q Why did you become concerned in that way?

A Because I had not yet made the arrangements to pay for it.

Q What was it about the Grumman announcement that gave you that concern?

A The stock price dropped.

Q And because of the spread between the marketprice and the price of your cash tender offer you assumed that the cash tender offer was going to be very successful?

A Yes.

Q With that concern, that is, that you would get the

whole company dumped in your lap, you went to Loeb Rhoades, didn't you, to discuss the question with them?

A Yes.

Q And you were concerned, as you say, because you didn't have enough money to pay for all the shares that might come in as a result of that announcement?

A Yes.

Q You met with Mr. Loeb and with Mr. Erpf on January 30?

A I believe so, yes.

Q Did you tell Mr. Loeb and Mr. Erpf on that day that speaking for yourself and not for the company you thought you would like to take all the shares that were tendered?

A Yes.

Q And you were not speaking for the company at that time?

A I thought I could persuade the company my way at that time.

Q But you had not yet done it?

A That is correct.

Q Up until the close of the cash tender offer you had not secured board authority, that is, the authority of your board of directors, to take all the shares that were tendered?

A That's correct -- beyond 300,000, you mean?

Q That's right.

A Yes.

Q You got, ultimately, 304,000, in round numbers, correct?

A I thought it was three-six, but I assume you are correct.

Q Well, I am just seeking an approximate figure. Would you say, Mr. Gordon, that the cash tender offer was successful?

A We got the number of shares we were asking for, 300,000. In that sense, it was successful. In the sense of being in a minority position of not getting the excess shares, it was not successful.

Q Would you agree that the activities of the Pipers had not succeeded in preventing shareholders from tendering to you?

A Not at all. I would not agree to that.

Q You would not agree to that?

A They were very successful. We had gotten only 300,000 shares in spite of the spread between our tender offer and the marketprice. I think they were enormously successful.

Q I show you this document and ask you if this is an

affidavit made by you dated the 31st day of March, 1969, and filed in an action in the Supreme Court of New York County?

A Yes.

Q That is, a copy of an affidavit. I ask you, Mr. Gordon, did you say in that affidavit as follows:

"Having failed to prevent its shareholders through misrepresentations from tendering shares to Chris-Craft" --

A Yes.

Q Was that statement made under oath, sir?

A Yes.

MR. PENNOYER: Could I have a ten-minute break, your Honor?

THE COURT: All right, we will take a short recess.

(Recess.)

BY MR. PENNOYER:

Q Mr. Gordon, did you consider as of the time you were undertaking the cash tender offer, that is, making the announcement -- did you consider whether you could get out of your investment should the cash tender offer come up with 300,000 shares?

A Yes.

Q Did you believe that you could liquidate your position in Piper?

A Yes, I thought I could.

Q And that, of course, assumes $65 on the cash tender offer and whatever the market cost was in the open-market purchases, correct?

A Yes.

Q You believed you could liquidate without loss?

A I believed I could liquidate up to a certain point without a loss, yes.

Q Up to what point?

A I believed I could liquidate without a loss at that time --

Q Should you decide not to proceed --

A At a point in time, subsequently I believed I could not liquidate.

THE COURT: What was that date at which you could liquidate?

THE WITNESS: During the cash tender offer I believed I could liquidate my position -- I believed our company could liquidate its position, I should say, if it was unable to get control.

THE COURT: How many shares would that have represented?

THE WITNESS: 500,000 shares.

Q I believe you testified that at some subsequent

time you concluded that Chris-Craft couldn't liquidate without loss. When was that time?

A Certainly by July.

Q What occurred in July that brought you to that conclusion?

A In May Bangor Punta had contracted to acquire the Piper shares, it purchased other shares on the open market and was now in the process of making -- was then in the process of making an exchange offer.

Q Are you saying that you concluded then that Chris-Craft could not liquidate without loss because Bangor was then trying to get and competing with you for control?

A They seemed to be succeeding, at that point.

Q After the cash tender offer did you make any open-market purchases between February 3, the closing date of the offer, and March 18? Did you buy any Piper shares?

A I don't think we did.

Q Did you make any effort to buy any Piper shares during that period?

A No.

Q You went on the Piper board, as I understand it, some time in March? Isn't that correct?

A Yes.

Q And some time in April you received copies of Piper

directors' minutes for prior years?

A For how long?

Q Well, 1968.

A That's right.

Q Amongst other minutes which you received was one which is an agreed finding in part, Finding 20, which stated the views of Piper's treasurer that the Pocono program, in substance, he didn't think should be pursued. Do you recall those minutes?

A Yes.

Q And he stated the reasons on the record?

A Yes.

Q And you learned about that, you read about it, in early April?

A Yes.

Q And as of that time you knew at least that the treasurer believed that 1970 is not a feasible date for introduction of the Pocono?

A Or ever, perhaps, according to the treasurer.

Q He spoke,did he not, about "two bad years behind us"?

A Yes.

Q And he mentioned there had been a shrinkage in business and profits and the single-engine markets of the company

are deteriorating?

A Yes.

Q You read that in April?

A Yes.

Q And, in his view, manufacturing was in a confused state?

A Yes.

Q Engineering schedules had never been met?

A Yes.

Q Employee morale was low?

A Yes.

Q YOu learned that in April?

A Yes.

Q And you continued ahead with an exchange offer subsequently, didn't you?

A Yes.

THE COURT: Did you believe these things that you learned?

THE WITNESS: I was shocked by them and I did believe them -- it wasn't a belief, but I suspected they may be true because Mr. Poole was a very powerful man and he was the man Mr. Piper brought to the meeting in January -- sure, I thought they might be true.

THE COURT: The result was that you made a business

judgment that with the bad news, nonetheless you should go ahead?

THE WITNESS: Yes.

Q I show you what has been marked Defendant's Exhibit I for identification and ask you is that a memorandum prepared by somebody in your company, Chris-Craft?

A No, it was not.

Q And do you know where it comes from?

A I believe so.

Q Where?

A It was prepared by Mr. Carl Ally, A-l-l-y.

Q Who is Mr. Ally?

A Mr. Ally is an advertising executive. He is the head of Carl Ally Associates, or something like that.

Q Do you know approximately what date it was prepared?

A It was prepared, I believe, in April or May. I don't know the date exactly, but it was some time, I think, prior to our exchange offer. It may have been subsequent. Does it show a date?

Q I don't see one on there. Did you request him to make that assessment that is contained in the memorandum, Defendant's Exhibit I for identification?

A What was your question, did I what?

Q Did you ask Mr. Ally to make the study that is represented by --

A I think he suggested it to me, in the first place.

Q Did you retain him to make this study?

A No.

Q Did you supply any information to him?

A I don't think so.

Q Did you get a copy of it in April?

A When I got a copy of it, I don't recall.

Q Did you read it?

A When I got a copy of it, I read it, yes.

Q Do you consider Mr. Ally to have some expertise in the aviation manufacturing business?

A Yes.

Q Did Mr. Ally, to your knowledge, procure any of the information contained herein from the Piper Company?

A I don't know where he got it.

Q In any event, you did read it in April or May of 1969?

A I said I don't recall. That is my guess.

MR. PENNOYER: I offer Defendant's Exhibit I for identification in evidence.

MR. LIMAN: May I see that?

MR. PENNOYER: Yes (handing).

(Recess.)

MR. LINEN: Is this for the truth of what it asserts or for the state of mind of the Chris-Craft directors?

MR. PENNOYER: State of mind.

MR. LINEN: No objection.

THE COURT: Received without objection.

(Defendant's Exhibit I for identification received in evidence.)

Q Mr. Gordon, when you read it did you agree with it, based on the information you had?

A It wasn't written to inform me, it was written for a different purpose and I wasn't reading it to agree with it or disagree with it.

Q Whether or not you were reading it for that purpose, did you agree with it or disagree with it?

A I don't recall. Because of the purpose it was written for, it was highly suspect, I suppose.

Q Well, what was the purpose of its being written, as you understood it?

A It was written as a draft of material that would be useful to us in the event we should be involved in a proxy fight for the control of Piper. It was at Mr. Ally's suggestion that he was an experienced man and could draft something like that, and he furnished it to us. I looked

it over, as a matter of curiosity. There was no proxy fight developing at that point in time and I don't really recall the contents of it at this time, except I would assume it would be derogatory to Piper management.

Q Did you agree with the following statement, page 6, and I quote:

"On the boards they," that is, Piper, "have the Pocono aircraft. However, this aircraft will not even be available for delivery until 1971. At that time they will be offering a slow, non-pressurized, non-turbine-powered aircraft. No one will want to fly in it. The ultimate consumer for this product is the person who buys a ticket on a third-level carrier"--

THE COURT: On a what?

MR. PENNOYER: "The ultimate consumer for this product is the person who buys a ticket on the third-level carrier."

A I would --

Q Just a minute. "This person will be flying in pure jet aircraft and turbine-powered aircraft and pressurized aircarft. He won't fly on the Pocono. It is an obsolete product today. There is a very significant market for the Pocono aircraft. However, Piper is not aiming it at that market.

They are aiming it at the domestic third-level transportation market, where it is sure to fail, in my estimation."

Did you read that part in April of 1969?

A Yes.

Q Did you agree with that?

A No. I thought it was an impossible thing to put into any proxy material and it reminded me of how impossible it is to have an advertising man write proxy material. That was the opinion of Mr. Ally, not verifiable. You would never get it through the SEC, you could never put it in proxy material.

Q As I understand it, you are saying that for use in proxy material it is unavailable, is that correct?

A Yes.

Q But my question is, did you agree with the statement that I just read, as of April, 1969?

A No.

Q In what way did you disagree with it?

A I thought maybe Piper aircraft knew more about it than he did.

Q But you had, in the meanwhile, read Mr. Poole's criticisms of the program, hadn't you?

A Yes.

Q And on January 27 you received a list of Piper

shareholders from the Piper Company, didn't you?

A What date?

Q January 27, 1969.

A I don't recall the date, but I will accept your statement on that.

Q Well, on or about that date?

A I don't even remember on or about, but I will accept what you state on it.

Q If I refer to a list of shareholders owning more than 500 shares, does that refresh your recollection now? -- sent by Mr. Janineau?

A No.

Q You were asked some questions yesterday relating to the Pocono, and one of the questions you were asked --

MR. PENNOYER: Page 168, Mr. Liman.

(Pause.)

Q I am going to direct your attention to -- you were asked yesterday --

MR. LIMAN: It is not 168?

MR. PENNOYER: No.

Q You were asked yesterday whether if you had known the facts set forth regarding the Pocono in agreed Findings 201 and 202 you would have considered those facts material with respect to your decision to proceed or not to proceed

with the purchase of Piper stock. Do you recall those questions?

A Yes.

MR. LIMAN: What is the page of the testimony?

MR. PENNOYER: 188 is the page.

Q Now the first agreed finding that you were asked to assume was 201, sir.

Do you have that before you?

A Yes.

Q Now that relates to a temporary stop work order on certain Pocono suppliers dated July 29, 1969, is that correct?

A Yes.

Q You didn't expect Piper to tell you, as a shareholder, before July 29, 1969, that it would be issuing a temporary stop order described in that finding, did you?

A What I understand this to be, I would have expected then to disclose, yes, because this was the day the tender -- the exchange offer expired, the exchange offer of Bangor Punta expired on this day, and even though apparently it was quite clear on this day they weren't going forward, they waited until this day to stop it.

It was a temporary stop order but they never resumed it. That was a permanent stop work order.

Q Do you know of any decision by Piper, prior to August, to discontinue, shelve or abandon the Pocono program?

A No.

Q And you have been through the board minutes for 1968 and for 1969, haven't you?

A To this day I don't see anything in the board minutes to discontinue the Pocono.

Q And you haven't heard of anything, apart from the board minutes, from any Piper employee, have you?

A Yes, I have.

Q From whom did you hear it?

A Dave Wallace.

Q Well, Dave Wallace is the Bangor Punta gentleman who came to the board subsequent to August, isn't that correct?

A Yes.

Q And he is the man in fact who shelved the program, correct?

A No.

Q Who did?

A The management of Piper shelved the program.

Q Pursuant to the instructions of Mr. Wallace?

A I don't know whose instructions it was pursuant to. I assume that it was the chief executive officer. I just don't know. It was discontinued.

Q Well, did any Piper employee who was an employee

prior to August tell you that Piper had decided not to proceed with the Pocono program, prior to the August date that we have already agreed upon when it was shelved.

MR. LIMAN: What date did we agree that it was shelved, Mr. Pennoyer?

THE COURT: I don't think that that interruption need be covered here. Go ahead.

THE WITNESS: What is the question?

THE COURT: Did any employee who was an employee prior to August, 1969, tell you that they had reached a determination to shelve this program?

THE WITNESS: No.

You mean prior to this date?

MR. PENNOYER: Right.

THE WITNESS: Prior to the date it was shelved, no.

BY MR. PENNOYER:

Q Now with respect to the other agreed findings that you were asked to assume when you were questioned about the materiality, that was .202.

Would you please turn, Mr. Gordon, to that finding?

MR. LIMAN: I didn't ask him to assume this.

I think you are misstating the record. I asked him if he knew those facts.

That was the only point with 201 and 202, Mr. Pennoyer.

MR. PENNOYER: Yes.

Q You were asked whether you knew about the facts set forth in 202.

MR. LIMAN: And 201, sir.

Q (Continuing) Now 202 was a letter ~~on the~~ From Avco ~~Astro~~, was it not?

A Yes.

Q And that was dated August 1, 1969, is that right?

A Yes.

Q Now you don't intend to convey to the Court the notion that Piper should have told you they expected this letter, set forth in this finding, before August 1st, do you?

A No. They knew the substance of this letter, that the engine didn't have that horsepower.

Q Well, you testified yesterday that you were astounded to learn that the engine was an experimental engine.

Do you recall that testimony?

A Yes.

Q Have you learned because of your familiarity now with the aviation manufacturing business that all aircraft engines have to be certificated by the Federal Aviation Agency?

You know that now, don't you?

A Yes.

Q You didn't know that in February of 1969, did you?

A Not as specific fact.

Q And you heard hyesterday the agreed finding that AVCO calls an engine experimental until it is certificated, is that correct?

A Until it has passed ground tests, yes. There were certain tests that an engine had to pass. It is considered experimental until then.

Q Until it is certificated by the FAA?

A I think there was a prior time, a time slightly prior to that, when it would be tested. There was something that Mr. Liman read after you read it that indicated that "experimental" would mean experimental.

Q You were asked some questions relating to the PA-30, which is also known as the twin Comranche, is that right?

A Yes.

Q And you were asked whether if you had known about the facts set forth in certain agreed findings, which I will go through in a moment here -- had you known those facts, would you have considered them material to making the decision as to whether or not to buy Piper stock?

A Yes.

Q To continue to buy Piper stock.

Now the first one you were referred to was 210.

Will you turn to that, please?

Now that, sir -- I am sorry --

MR. LIMAN: Would you hand him this, please?

Q Do you have 210 before you?

A Yes.

Q That is a telegram from the Eastern Region of the Civil Aeronautics Administration, dated September 2, 1964, isn't it?

A Yes.

Q And it says in substance that the Eastern Region of the CAA finds that the airplane needs to be flown by skilled pilots in order to meet the specifications of certain regulations.

Isn't that right, in substance?

MR. LIMAN: UI object to the characterization, your Honor.

Q (Continuing) In substance.

A Yes.

Q Now 211 is a telegram from Gibson, again, of the Eastern Region, dated September of 1964. In substance it is the same matter, is it not?

A Yes.

Q And another finding that you were referred to was a report of a flight test data sheet of September 15, 1964 -- and this is now a Piper report -- showing certain flight tests run by what were considered to be average or pilots of average skill.

Is that correct?

A Which one are you referring to, sir?

Q 212.

A Yes.

Q And then, in 213, we have a letter to Piper from the Civil Aeronautics Administration, Eastern Region, saying that Washington has now decided, in substance, that a pilot who is skilled and who is above average may qualify the airplane under certain sections of the Civil Aeronautics regulations.

A Yes.

MR. LIMAN: Exceptionally skilled pilots.

THE WITNESS: Exceptionally skilled pilots, right.

Q And, in fact, the Washington office decided that the Eastern Region's interpretation of the rule had been wrong, is that right?

A Yes, sir.

Q Now you are unaware today of any instance in which the Civil Aeronautics Administration or the Federal Aviation Agency has ever grounded the PA-30, is that correct?

A Correct.

THE COURT: In effect, you are saying that there is no such instance, is that right?

THE WITNESS: Yes.

THE COURT: They have not ground the PA-30, is that correct?

THE WITNESS: That's correct.

Q Now finding 218 is another one of the agreed findings which you were asked to refer to yesterday, and that contains a quotation from a NASA report, a study of certain aircraft, including the PA-30, is that right, sir?

A Yes.

Q And that study is dated November, 1966, is that right?

MR. PENNOYER: Your Honor, may we approach the bench?

THE COURT: Let me ask you: Can't you cover this general ground by referring the witness to finding numbers and then putting your general question?

MR. PENNOYER: I will try to do that, your Honor.

THE COURT: The content and characterization of it I can read for myself.

MR. PENNOYER: All right.

BY MR. PENNOYER:

Q Now finding 218 is dated November, 1966, and is a public document, isn't that correct?

A It's available to the public, yes.

Q Including Chris-Craft?

A Yes.

Q And finding 220 makes reference to a document, a study dated March of 1967, also available to the public, correct?

A Yes.

Q Including Chris-Craft?

A Yes.

Q Now finding 237: I will ask you to look at that for a minute.

A Yes.

Q And I ask you to refer specifically to the policy of June of '68 to June, '69.

A Yes.

Q Do you have that?

A Yes.

Q Now you have never been told what percentage of the premium relates to any particular product of Piper, have you?

A Not in specific terms, no.

Q Or what percentage relates to the increase in policy limits?

A No.

Q Or the fact that airplanes were going to be produced that have more seats in them?

A No.

Q Now yesterday you made reference to certain statements by Mr. Piper relating to premiums, and I believe --

Well, I won't try to quote them. Do you recall those statements, sir?

A Yes.

Q Will you look at finding 241? This is proposed by Chris-Craft.

A Yes.

Q Now that, sir, is a quotation from a minute of the board of directors, right?

A Yes.

Q A meeting held September 8, 1970, is that correct?

A Yes.

Q Is that the meeting that you had reference to yesterday in attributing certain statements to Mr. Piper, Jr. regarding insurance premiums?

A Yes.

Q And does the text that is quoted in finding 241 refresh your recollection as to whether Mr. Piper on that occasion told you that the insurance premium increase was attributable to any particular product of Piper?

A As a matter of fact, he said it at an earlier meeting, I believe.

Q Do you remember what date that was?

A No.

Q Can you put it in terms of weeks, months, before September 8, 1970?

A It was shortly before, yes. Maybe two or

three meetings before.

Q And your question to him at that time was begotten in your mind as a result of a settlement of a case in Philadelphia, wasn't it?

A No. We were talking about the insurance premium increase, and I recall asking about the -- yes, we were -- I think I tried to retain counsel in Philadelphia, and the counsel in Philadelphia was representing the Cramer case plaintiffs and refused to represent us in a related matter, and it was in connection with that discussion, I think, there was some colloquy about insurance rates and how they would be affected.

Mr. Piper in that meeting said that the insurance rates were adversely affected by the twin Commanche, and I recall that vividly, because when he made this statement it didn't appear in the minutes.

And then, when this statement appeared, I asked Mr. Martin specifically to make sure that it would be in the minutes, and I called him and asked him.

I hadn't done it before. I tried to refresh his recollection about the earlier meeting. I certainly wasn't successful in getting him to put it in the minutes of the earlier meeting.

Q Now will you state for the record the exact words

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that Mr. Piper used regarding the increase in premiums?

A I don't remember the exact words he used. The substance of what he said was that the Twin Commanche had adversely affected the rates.

Q And where was he when he said that, as you say, in substance?

Where was he? Where was this discussion?

A At Bangor Punta's office.

Q Who was present?

A There was a majority of their people, and there may have been one or two of ours.

Q A majority of whose people?

A Bangor Punta.

Bill Piper was certainly there. Dave Wallace was always there.

Nick Salgo was generally there.

MR. RYAN: What was that answer?

THE WITNESS: Nick Salgo, I think, was there. I don't recall whether he was or he wasn't.

And Larry Barnett I am sure was there.

Q Any others?

A I don't recall. Maybe Gordon Robertson.

John Martin was generally there.

Q Now you testified yesterday that Mr. Wallace,

sometime in September, mentioned to you that -- I think you said -- they had a serious problem of safety to deal with the PA-30.

Do you recall thattestimony?

A Yes.

Q And I believe you testified that Wallace told you that they were hiring an outside consultant, is that correct?

A Yes.

Q Now didn't you --

A Not at that point in time. I think I told them to hire an outside consultant. I think it was only much later that they did.

Q And did they ever show you the report of that outside consultant?

A I don't recall having seen it.

Q Chris-Craft hired an outside consultant, did it not?

A Yes.

Q And your consultant was given --

MR. PENNOYER: Withdrawn.

Q Did your consult fly the PA-30?

A Did he himself fly it, or have it flown?

Q Yes. Did he fly it himself?

A I don't believe he did.

Q Did he have anybody in his organization fly it in connection with his study for you?

A I don't know whether he did or didn't. I don't think he did, but I am not sure.

Q Now this occurred in what year?

A In 1970.

Q And your consultant came up with a report based on his review of documents, statistics, isn't that correct?

A I wouldn't characterize it that way. It was based on his review of what he considered necessary to review it.

I don't want to characterize what he reviewed. It might have been scientific evidence. It might have been flight tests.

I think he reviewed data of flight tests.

Q You do recall he went down to NASA and discussed the public report that they put out? Do you recall that?

A Yes.

Q And he went down to the Federal Aviation Agency and discussed the report that they put out?

A Yes.

Q And as a result of his review, he recommended that a certain retrofit, or a retrofit of a certain sort be made to the PA-30, did he not?

A No.

Q He did not?

A No.

Q What did he recommend?

A Is the report in evidence? May I look at it?

Q I will show you a copy of what I believe to be your expert's report.

A He made eight recommendations.

Do you want me to go through them?

Q I want to simply ask you: Did he in any of those recommendations represent a certain sort of retrofit to the PA-30's?

A It's either a conclusion or a recommendation. It's headed "Conclusions and Recommendations."

Q Either as a conclusion or a recommendation?

A It says -- yes. Conclusion 5 or Recommendation 5.

Q Now subsequently you took that report down to the Federal Aviation Agency, did you not?

A Yes.

Q And left the copy with them?

A Yes.

Q Discussed it with them?

A Yes.

Q And did the Federal Aviation Agency take any action as a result of your report?

A None that I know of.

Q Did you get any response of any sort?

A Yes.

Q Did you get an answer in writing?

A I got a response from Piper. They made modifications in the plane, so there was a response from Piper. They made modifications on the plane, the retrofit program.

Q And the modifications that you wanted to have made would have involved a total expense of about $5 million, wouldn't they?

A No, sir. That's not true.

Q How much did you anticipate it would cost the company?

A The company gave me that estimate of $5 million.

Q And --

A I was in no position to make estimates, nor did my expert.

Q All right.

Now the actual amounts of the reserve set up for the modification that was subsequently determined in April of '70 was $250,000, wasn't it?

A That's correct.

Q And the $250,000 was to retrofit some 2000 airplanes that had been produced since 1962?

A Was it 2000? I thought it was more.

Q Approximately. Was that your understanding?

A It was more planes than that, I think, but it was all the planes in the field, whatever number they were.

Q Now you didn't agree with the conclusion of the majority of the board of directors that the retrofit should be no more than one which would require that much reserve, $250,000, did you?

A No. That's not accurate.

Q What was your position on the $250,000 reserve, Mr. Gordon?

A At the time that the $250,000 was taken as a management decision, the management had not yet concluded whether the $250,000 retrofit program would be adequate. They had a series of retrofit programs ranging from the $5 million program which management first suggested, which management first gave us the price estimates, and

then, as they worked on it, they came up with lower and lower cost estimates of what they felt they had to do. At the time the $250,000 retrofit reserve was taken, the operating decision had not yet been finalized, and I thought that it might be inadequate under the circumstances because of that.

Q And was it subsequently finalized, the operating decision?

A Yes.

Q And this was some time in 1970?

A Yes.

Q Do you remember the month?

A No.

Q And the finalized version called for a retrofit costing not more than $250,000, didn't it?

A Yes.

Q Did you agree with that?

A I believe I abstained on that, because I didn't know. I had gotten so many conflicting reports by that time.

Q Now have you ever heard any member of the Piper board or any Piper employee who was an employee prior to August of '69, say that there was a problem with the PA-30?

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A Yes.

Q Who?

A Walter Jamoneau told me.

Q When?

A On the telephone.

Q Where were you when the telephone call was made?

A In New York.

Q Who made the call? Who initiated it?

A I did.

Q And the date of the call?

A Oh, September or October of '69. I don't know if Dave Wallace is an employee -- I guess Dave Wallace and Nick Salgo were also employees, butthey aren't the ones you are referring to.

Q No. I am not referring to any Bangor Punta or Chris-Craft directors who may have joined the board after.

A I talked to Walter Jamoneau.

Q And what did he say to you?

A He explained to me what a stall spin accident is.

Q Now what did he say to you?

A It was a very complicated explanation. I don't

recall at all. And I have since had it explained many times.

I am not sure whether I would be repeating his explanation or subsequent ones. It was a complicated explanation of how the air flows over the airfoil and what happens under certain configurations.

Q And do you remember anything he said in the course of that phone conversation?

A That was what he said to me, was explaining what a stall spin is.

I called him and told him that I had heard about the problem with stall spins, and I wanted to know what a stall spin was, and he then explained it to me.

And then, the next I heard about it, was at a meeting at Piper Aircraft. The purpose of the meeting was to explain to me the Twin Commanche problem, and the stall spin problem to show me the accident record and to tell me the facts about it.

Q And who was present at that meeting?

A Wally Smith chaired the meeting.

I think Winslow Maxwell was there with me.

Q Wally Smith was director of domestic sales?

A Yes.

Q Now did --

A He committed suicide shortly after that.

Q Yes.

Who else was present?

A I forget the name. There was a fellow who had a long chart of accidents, and he was in charge of collating this information.

Q Do you remember his name?

A No.

Q Who else?

A I am sure there was somebody from Bangor Punta there but I can't -- John Flick maybe was there. I am just not sure.

Maybe John Martin. I don't recall. But I know they wouldn't let me be there without one of them being there.

Q Do you remember any other --

A I don't remember any other --

Yes, there were four or five people.

Q Now did anybody from Piper tell you on the occasion of that meeting that Piper believed there was a safety problem with the PA-30?

A No. They told me the opposite. They told me that the plane had no safety problem, that it is -- the

accident rate was the result of inexperienced pilot operation and there was no explanation for the number of instructors who had been killed, and they told me that anyhow any of the problems that people might have thought it had were certainly going to be corrected on the Twin Comanche CR, that they presented the Twin Comanche CR as being nothing more than a cosmetic change, that is, that the plane wouldn't land as hot as it used to, and it would be a better pilot's plane.

It was definitely -- Wally Smith made the presentation, and he was very emphatic in telling me that they did not have a safety problem.

Q And did Wally Smith indicate to you that the Piper management was considering bringing out this PA-30 with counter-rotating props, under the title or model designation of PA-39?

A It was a CR. I think it was PA-30 CR.

I don't know what designation -- it had a counter-rotating prop, is my recollection.

Q Before today have you ever heard of the PA-39?

A I am getting confused with the P-39, a definite military aircraft. I can't recall which one it is. I might have heard it at that meeting. I really don't know.

Q Now the PA-30, the Twin Comanche, came out in 1962, didn't it?

A Yes.

Q And have you learned since of a model that is expected to replace it?

A Are you talking about the Twin Cherokee?

Q Yes.

A Yes.

Q And would you consider that a normal interval of time between models, six or eight years for the same sort of airplane?

A I don't know that that was a replacement for the Twin Comanche. I had understood it to be a replacement for the Twin Comanche CR. I forget the price range of it exactly right now.

MR. PENNOYER: I have no further questions, your Honor.

THE COURT: Do you want a five-minute recess before we take up the next series?

THE WITNESS: I am all right, if everybody else is.

Thank you, your Honor.

CROSS EXAMINATION

BY MR. RYAN:

Q Mr. Gordon, are you familiar with the brokerage firm of Mitchell Hutchins & Company?

A Yes.

Q Do you know any of the officers of that company?

A I know Roger Spencer. I don't know if he is an officer or not.

Q And when did you have occasion to first meet Mr. Spencer?

A I believe I met him in June of 1968.

Q And do you recall what the circumstance of the meeting was?

A Yes. It was after the merger. It was at the merger meeting, a shareholders meeting to approve the merger of Bangor Punta and Chris-Craft.

Q You mean Baldwin, Montrose. You said Bangor Punta.

A Baldwin, Montrose and Chris-Craft.

Q Perhaps it is a Freudian slip.

How did Roger Spencer have anything to do with the efforts of Chris-Craft to acquire shares of the Piper Aircraft Company?

A Yes.

Q And when did you first learn of that association?

A About January 21st.

Q Of 1969?

A Yes.

Q And you hadn't heard of Mr. Spencer's work on behalf of Chris-Craft regarding Piper shares at that time?

A No.

Q Did you know whether Mitchell Hutchins had anything to do with Chris-Craft's efforts to obtain shares of Piper in early 1969?

A Yes.

Q And do you know who at Mitchell Hutchins was working on behalf of Chris-Craft Company?

A No.

Q Do you know what Mitchell Hutchins was asked to do by Chris-Craft?

A They were the brokers through whom we bought most of our Chris-Craft stock.

MR. LIMAN: He misspoke.

THE WITNESS: I should have taken the five-minute recess.

They were the brokers through whom we bought

most of our Piper stock in January.

Q Who dealt with Mitchell Hutchins & Company?

MR. LIMAN: For Chris-Craft.

Q For Chris-Craft.

A For Chris-Craft?

Herb Siegel or Jim Rocklis would have been the ones to deal with them.

Q Did you have any discussions at that time with Mr. Siegel or Mr. Rocklis concerning the efforts being performed by Mitchell Hutchins for Chris-Craft?

A I wouldn't characterize it as efforts. I knew they were being used as a broker.

Q Well, your office is right across the areaway from Mr. Siegel's office and right next to Mr. Rocklis' office.

A That's correct.

Q And you were or are a very tight-knit organization?

A Yes.

Q And you mean to say that you didn't have any discussions between each other or know what Mitchell Hutchins was doing for Chris-Craft?

A Yes. I know what they were doing. I don't consider handling brokerage an effort. It's a pleasure.

Q Did you know that Mitchell Hutchins had been requested to ascertain who were the significant holders of Piper shares?

A No.

Q In early 1969?

MR. LIMAN: I object to the form. It is leading and assumes facts not in evidence. But it is cross.

THE COURT: Objection overruled.

A No.

Q Do you know whether Mitchell Hutchins was asked to look at the Vickers reports to ascertain which mutual funds were holders of Piper shares?

A I know now, but I didn't then.

Q Now you testified in your examination yesterday that --

THE COURT: Mr. Ryan, what does he know now?

THE WITNESS: That they were asked. Some broker was asked to look at the Vickers. I assume it was them, since they were doing the buying.

Q Mr. Gordon, you testified yesterday that you first heard of Technology Fund on or about January 21st. Do you recall that testimony?

A Yes.

Q And wasn't Technology Fund the largest single holder of Piper shares in January of 1969?

Didn't they own over six per cent of the outstanding Piper shares in January, 1969?

A Yes, but I am not sure that they were the largest single holder. You are asking --

Q Certainly the largest single mutual fund, isn't that correct?

A To the best of my knowledge, they were.

Q And when did you first obtain that knowledge?

A January 21st.

Q And you heard no discussions at all or had no discussions at all with Mr. Siegel or Mr. Rocklis that Technology Fund was a big holder of Piper shares?

A That's correct.

Q Did you ever discuss with Mr. Siegel the efforts he made through Mitchell Hutchins, particularly Mr. Spencer, to obtain a cross of the Tech Fund shares in early January?

A No.

Q Do you know that to be a fact now?

A No.

THE COURT: So that the record will be clear, I assume that you are talking about a cross purchase and

sale?

MR. RYAN: That is correct, your Honor.

Q You know what I mean by a cross, Mr. Gordon?

A Yes.

Q Efforts were made by Mr. Siegel to obtain Technology -- to have Mitchell Hutchins ascertain whether Technology Fund would be willing to sell their shares on the New York Stock Exchange on a cross?

A That I know now, yes.

Q That you know now?

A Yes, but I didn't know it then.

Q You didn't know it on January 21st?

A No.

Q Well, when you were having these conversations with Mr. Siegel on January 21st, in which you would characterize that both yourself and Mr. Siegel were dubious about whether you should buy Technology Fund, Mr. Siegel never mentioned that he had already made an effort to obtain the Technology Fund shares?

A No.

Q Did Mr. Siegel ever say anything to you about Mitchell Hutchins' efforts to obtain the proxy of Technology Fund after his attempt to get a cross from Technology Fund was refused?

A He made no attempt to obtain the proxies. That's not true, the proxy of Technology Fund. That's not true.

Q Do you know whether Mr. Spencer had a conversation with Mr. Williams, the executive vice president of Technology Fund in early January, at which time Mr. Spencer, according to Mr. Williams, attempted to get the proxy of Technology Fund to join with Chris-Craft in an attempt to get control of the Piper Aircraft Company?

MR. LIMAN: What is the question? Does he know that?

MR. RYAN: Yes.

A No. I don't know that.

Q You never had any discussions of that nature with Mr. Siegel?

A Yes, I did. I told him that he could not get any proxies from anybody. He asked me the question.

Q Did he happen to mention it in relation to Technology Fund?

A No.

THE COURT: Why did the subject of proxies come up?

THE WITNESS: He was buying a lot of shares of Piper Aircraft.

THE COURT: In addition to those that he was buying --

THE WITNESS: I think I brought it up, to be cautious. I warned him.

THE COURT: In other words, it was because you were concerned he might want to attempt to get proxies that you warned him?

THE WITNESS: I am sure that he was aware of the proxy rules, but I didn't want him to say anything that could be interpreted as trying to get proxies, under the rules.

THE COURT: What rules were you referring to?

THE WITNESS: The rules of the Securities and Exchange Commission with respect to soliciting proxies, requiring a filing, if you solicit proxies for more than a certain number of people, and it is often very difficult, if you even solicit from one, to demonstrate that you only solicited from one.

I didn't tell him to solicit from anybody. A customary procedure of mine, representing a company.

BY MR. RYAN:

Q Suppose he only asked Technology Fund. Would there be any problem under the proxy rules, Mr. Gordon?

A I don't think there would be but I have not looked

into that question.

THE COURT: If he solicited Technology at a moment when he was going for control, wouldn't there have been some 13-B requirement?

MR. RYAN: Possibly, but I think until he actually -- I haven't looked up the law but I don't think it actually makes an arrangement; he could do it. As we understand it, he was refused.

THE COURT: You mean until he became a ten per cent stockholder?

MR. LIMAN: I think that Mr. Ryan's statement does not state the record.

MR. RYAN: Let's proceed on it.

THE COURT: I am not talking about evidence at the moment. We were just discoursing on a point of law.

Q Was there any question, Mr. Gordon, in your mind, or in Mr. Siegel's mind, that you would be unable to obtain the Technology Fund shares on January 22nd?

A Yes.

Q What was the question?

A I didn't know if they would sell at a price at which we wanted to buy.

Q A price you wanted to buy at? In other words, there was some doubt in your mind that they would be unwilling to take a 20 per cent premium over the current market for their block of 6 per cent of Piper aircraft?

A Certainly, if they thought they could get more. They were unwilling to take $60.

Q So it was just a question of price?

A It was a question, as I said, of whether they would be willing to sell at a price that we would be willing to buy. So there was a substantial question in my mind, as you asked, and that is why I answered that way.

Q During the course of your negotiations with Mr. Hawkinson, was there any discussion as to what Chris-Craft's intention was in regard to their investment in Piper? Was there any discussion about Chris-Craft's attempt to get control of Piper?

A Well, we did tell him that -- at first we said we

might be making a cash tender offer, and then subsequently told him that if we bought his shares we would be making a cash tender offer for 300,000 shares -- we didn't say 300 -- as a matter of fact, he learned that later -- for shares of Piper. That was part of the price negotiation with him.

Q Didn't he say to you, in words or substance, that Chris-Craft wouldn't be buying Tech Fund shares unless they were going to go to the balance of the outstanding shares and that is why he fixed at $65 his price?

A I don't know if he said that to me, but I am sure that was what he was thinking.

Q In your testimony yesterday, at page 103, you were asked the question:

"Q In substance, what happened in that discussion? What was it about?

"A There was a discussion about our buying Mr. Hawkinson's stock, and we offered him $60 a share and I think he said he wasn't interested, and then we offered him what I called the most-favored-nation clause, that is, if we were to tender for additional shares at a higher price we would give him the difference between $60 and the higher price when and if we made such a tender, and he said he wouldn't be interested in that, that we wouldn't be buying

his shares unless we were going to buy the balance and we would have to pay $65 a share to get control and that is what we would have to pay him to get his shares and that would be all he would be interested in."

Was that the substance of his conversation?

A Yes.

Q So at that time, at least, he expressed the view that you were going to go for control?

A Yes.

Q Did you have any discussions with him as to what your next step would be, assuming your coming tender offer would be successful?

A No.

Q Was there any discussion at all about anyproposed exchange offer?

A No.

Q Did you discuss with Mr. Hawkinson or have any conversation with Mr. Hawkinson in which you indicated the method in which you hoped to get sufficient shares to control Piper?

A No.

Q Did you have any conversation with Mr. Hawkinson about whether Technology Fund would be interested in buying Chris-Craft's shares?

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A No.

Q Did Mr. Hawkinson indicate to you that Technology Fund might consider buying a position in Chris-Craft?

A No, although the subject of the meeting was Chris-Craft and he was there to find out about Chris-Craft, in the first instance, and there was talk about Chris-Craft and I assumed that what a fund manager has in mind in coming in to talk about a company is to decide whether he is going to buy it or not buy it, but they don't tell you and you don't ask them at the meeting.

Q Did you talk to Mr. Hawkinson on the morning of January 23?

A Yes.

Q Did you have any conversation with him at that time in which he indicated that Technology Fund might purchase some Chris-Craft shares?

A I never had conversations like that with him. I didn't learn that that was the purpose of the meeting until laterand I didn't know that they did buy shares until much, much later.

Q When did you first learn that Technology Fund began purchasing Chris-Craft shares on January 23?

A I believe it was after they sold it.

Q When wasthat?

A I believe that was after May 8.

Q Who told you that they had sold the shares?

A I forget. Herb Siegel is generally the one who tells me that. It may have even been in connection with this action.

Q Did you ever learn how many Chris-Craft shares Technology Fund bought between January 23 and approximately February 14, 1969?

A I saw it in connection with this action, yes, but I don't remember the number.

Q Would there be a hundred thousand shares of common stock and ten thousand shares of your preferred stock?

A Is that what the stipulated fact is?

Q That's correct.

A That is what I read, yes.

Q By the way, Mr. Gordon, are you familiar with the price of Chris-Craft common stock on the New York Stock Exchange beginning approximately January 13 and ending approximately February 14 of 1969?

A I don't know it by heart.

Q Well, was the price of Chris-Craft common stock rising beginning on or about January 13, 1969, and continuing up until the middle of February of 1969?

A I believe it was.

Q In fact, on January 14 Chris-Craft common stock closed at $41.50 and on January 29 it closed at $51.50, 10 points. Does that refresh your recollection as to whether you were familiar at the time with the price action of your stock?

A I was definitely familiar at the time.

Q Did you ever make any inquiry to ascertain what was causing the stock to rise?

A No.

Q Do you know whether anyone at Chris-Craft made any effort to ascertain that fact?

A No, although I would assume somebody might have -- Herb Siegel would frequently ask that question, but I don't know whether he did or didn't at that time.

Q Do you know now whether there was any specific reason or reasons for the rather sharp rise in your stock?

MR. LIMAN: Objection.

THE COURT: If you take out the word "sharp," the objection is overruled.

MR. RYAN: Take out the word "sharp."

A Yes.

Q What were those reasons?

A There were more buyers than sellers.

Q Is that the only reason?

A There were underlying reasons. Our business was good, we were selling a lot of boats then, our television was having a record year, our $26,000,000 debenture offer had been successful. I assume those were all of the reasons, but the basic reason that there are more buyers than sellers -- the immediate reason.

Q Are you familiar with Investors Diversified Services?

A Yes.

Q What business are they in?

A They are in a lot of businesses. They are diversified investors. They have mutual funds -- I don't know if they have an insurance company or not.

Q What is their relationship, if any, to Chris-Craft?

MR. LIMAN: Today?

A Today?

Q In January, 1969 --

A They were then and they are today one of the lenders to Chris-Craft.

Q One of the senior noteholders of Chris-Craft?

A Yes.

Q What percentage of the outstanding senior notes are owned by IDS?

A I think it is 3,000,000 out of 14, but I am not sure.

Q Could it be 5,000,000?

A Not 5,000,000. It could be 4,000,000.

Q Do you know whether IDS or any of its funds owned in January, 1969, shares of Chris-Craft?

MR. LIMAN: The question is does he know now or did he know then?

MR. RYAN: Did he know then.

A I knew at some time that IDS owned shares of Chris-Craft, but I dont recall the time.

Q By the way, Mr. Gordon, when the arrangements were made for the borrowing at the Philadelphia National Bank for the additional bank debt, that required an amendment of your senior notes, isn't that correct?

A No.

Q Weren't you required to get permission to increase your bank borrowing by $15,000,000?

A No.

Q Do you recall in November, 1968, that your senior notes were amended?

A Yes.

Q What was the reason for the amendment?

A To increase our borrowing power.

Q Relating to the additional $15,000,000, irrespective of the Philadelphia National Bank?

A That's right.

Q And at that time you had conversations with officials at IDS concerning the amendment to the notes?

A Yes.

Q Did you personally have any of those conversations?

A Numerous.

Q And during the course of those conversations did they ever inquire as to what your business plans were?

A Yes.

Q Do you recall whether during the course of those conversations you had any discussions concerning Chris-Craft's interest in the light aircraft industry?

A I don't recall if we mentioned the light aircraft industry.

Q Well, that was one of your vital interests at that time, wasn't it?

A No.

Q When did you first become interested in the light aircraft industry?

A You mean vitally interested? In January, 1969.

Q Before that it was only a partial interest?

A It was one of the many industries in the spectrum

of leisure time, yes.

THE COURT: When did you become casually or otherwise interested in it as an investment media?

THE WITNESS: We looked at the -- casually? Our first serious interest was when we looked at the Ted Smith Company.

THE COURT: Can you give me a date?

THE WITNESS: I think I testified as to when that was. It was in 1968, I believe.

Q Getting back again to January, 1969, do you recall having any conversations in January of 1969 with any IDS representatives?

A I don't recall. I may have, but I don't recall.

A Do you recall ever discussing with any IDS official the fact that IDS was buying shares of common stock of Chris-Craft Industries on the New York Stock Exchange in January of 1969?

A No, I don't recall.

Q Did you have any discussions with any of your colleagues at Chris-Craft concerning whether IDS was purchasing shares of Chris-Craft stock?

A I don't recall.

Q In January, 196 --

A I don't recall.

Q Well, don't you know, Mr. Gordon, at least now, that IDS between January 14 and January 31 purchased over 103,600 shares of Chris-Craft's common stock?

A Yes -- what were the dates?

Q January 14 to January 31.

A I know it now.

Q Don't you know that on January 23, 1969, the day that your tender offer became effective, IDS and Technology Fund purchased over 72 per cent of the shares traded on the New York Stock Exchange that day?

A I learned that from your proposed findings, I think.

Q But you never knew that before?

A No.

Q You never had any discussions with IDS concerning purchases of stock?

A Of Piper? No.

Q Yes.

A No.

Q No, of Chris-Craft.

A Of Chris-Craft?

Q Yes.

A That I may have. I don't recall. You have asked me whether I knew if I had these discussions, and I said I don't recall.

Q I am asking whether you knew in January, 1969, that between January 14 and January 31 IDS purchased 103,600 shares of Chris-Craft stock.

MR. LIMAN: You asked whether he knows now?

THE COURT: Please, Mr. Liman, don't do that. If you have an objection, please make your objection. Don't engage in colloquy or interrupt the examination otherwise.

Q You know that now?It is an agreed fact.

A Yes.

Q But your testimony is that you didn't know in January of 1969, or even February of 1969, that IDS was purchasing shares of your company's stock on the New York Stock Exchange during January?

A I know I didn't know it at the time they were purchasing but I learned it some time later, that they had a position.

Q How long?

A I believe it was after they had their position. I don't recall the time.

Q Would it be February of 1969?

A I just don't remember.

Q You testified yesterday, Mr. Gordon, that Mr. Siegel had a conversation with a Mr. Potts of the Philadelphia National Bank concerning an extension of a loan to Chris-

Craft to be used in the tender offer for the Piper shares. Do you recall that testimony?

A The making of a loan?

Q The making of a loan.

A Yes.

Q Your testimony was that you didn't learn of these conversations or hear about these conversations until January of 1969. Is that correct?

A They didn't happen until then, was what I testified, I think.

Q Did you ever have any conversation with Mr. Siegel prior to, I believe it was, January 15, 1969, or approximately then -- you testified that Mr. Siegel was having conversations with Mr. Potts concerning an extension of credit to Chris-Craft?

A No.

Q Could Mr. Siegel have had such conversations?

MR. LIMAN: Objection

THE COURT: Sustained.

Q During the course of your tender offer, or shortly prior thereto, did you ever have any conversations with anyone at Chris-Craft concerning whether Chris-Craft may become in default of the provisions of their senior notes in the event they obtained 300,000 shares of Piper stock on their

tender offer?

A No.

Q Was Chris-Craft ever in default on their senior notes?

A Yes.

Q When did such default occur?

A Not in connection with any time sequence in this action. There was a question of whether Chris-Craft was in default under its senior notes, in the time sequence in this action, in --

Q April, 1969?

A Yes.

Q What was the nature of the default?

A There was no default, sir.

Q Well, what was the question, then, as to whether there was a default?

A The question of whether there was a default was whether we had -- I think whether we had exceeded our other investment clause.

Q Would you be a little more explicit on that?

A The debt agreement, which was quite complicated, had a provision, or a number of provisions, limiting the investments that Chris-Craft could make without further consent by the senior creditors.

Q And there was a question as to whether you exceeded the amount you could invest?

A That's correct.

Q And do you recall whether there was any discussion as to the time period in which such default could have occurred, if it did occur?

A It would have been when we got the number of shares that brought us up over the limits in the indenture agreement. There was no discussion as to when that precise time occurred.

Q Was it discussed that it could possibly have occurred during the course of your tender offer?

A No.

Q Well, at the completion of your tender offer, did it occur -- had it occurred or possibly occurred?

A I think so, but I am not sure. It is a mathematical calculation.

Q But you don't recall ever having any discussions with anyone concerning the possibility that it could have occurred during the course of your tender offer?

A No. The subject came up long after the tender offer.

MR. RYAN: Please mark this for identification as the next defendant's exhibit.

xx

(Defendant's Exhibit T marked for identification.)

MR. RYAN: This is a one-page Xerox of handwritten notes.

Q Mr. Gordon, I show you Defendant's Exhibit T for identification. Haveyou ever seen that document before?

A I don't recognize it.

Q Do yourecognize the handwriting?

A No.

Q Who is Mr. Winslow Maxwell?

A Winslow Maxwell was the comptroller -- financial vice-president of Chris-Craft.

Q In January of 1969?

A Yes.

Q Could that be Mr. Maxwell's handwriting (indicating)?

MR. LIMAN: Objection.

A I don't recognize it. It could be. I just don't know.

MR. RYAN: Your Honor, this document was produced by Chris-Craft during the course of our discovery proceedings and it never has been identified as to who wrote it, other than it came out of Chris-Craft's files, or at least was produced by their counsel.

THE COURT: Let's look at the internal evidence.

Can you by examining this line by line identify the information with factual data concerning Chris-Craft?

MR. RYAN: I believe we can, your Honor.

THE WITNESS: Can I?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: Is there anything on here which appears to you to be inconsistent with the facts prevailing from 1968 to 1969, as you knew them?

THE WITNESS: There are some things here I can't even read. What is the first line, "available for invest"? I assume it's investments. It shows in '68, 8648,983 -- I don't know whether that is consistent or not.

The next line, "Interest payable on total debt, 2753.5 already over restriction!"

THE COURT: Does that have any --

THE WITNESS: That wouldn't have --

THE COURT: Does that have any significance to you?

THE WITNESS: Yes.

THE COURT: What does it mean to you?

THE WITNESS: I would assume that it refers to the restriction on interest coverage -- we only had that in the senior debt agreement or -- for either senior funded debt

or subordinated debt. There were two different tests. That is my assumption as to what it is referring to. Since we were never over that restriction, that provision has never been violated, to my knowledge. This might have been worked up -- I don't know what that refers to. Perhaps it refers to some new financing.

It says, "Amount available, other investments." This comes to the other investments clause I was referring to.

"AT11/30/68," eight thousand or eight million, I don't know which that is.

Q Down below it says, "Ad debentures, 25."

A That must be eight million. AT would be --

Q Isn't it at 11,30, where Chris-Craft had invested eight million one hundred sixty-three thousand in other investments?

A It could be at. The way he has a capital A and a capital T it could be something else.

THE COURT: Did you have $33,000,000 worth of investments when you added the debentures of $25,000,000 in there?

MR. LIMAN: Are you reading "Amount available, other investments"?

MR. RYAN: For other investments.

Q Isn't the 8,163,000 the amount you could under your senior notes invest in other companies?

A The 8,000,000 --

Q 163.

A At 11/30/68?

Q Yes.

A Yes.

Q And the debentures, these are the convertible debentures, I would assume, the 25,000,000 you issued in ~~September~~ December, 1968, that was available for investment in other companies, is that correct?

A I don't think we had it at that time.

Q At what time?

A At 11/30/68.

Q No, but subsequent thereto you did have 25,000,000?

A Yes.

Q In January of 1969, preceding the opening of the tender offer on January 23, do you know how much money you had invested in other companies at such time?

A In January?

Q That's right.

A Of 1969?

Q Immediately before the opening of the tender offer.

A We had some Warner Bros. and some M-G-M. I don't

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know the amount.

Q And you had $10,000,000 in Piper shares at that point, too, with the Tech Fund shares?

A With the Tech Fund.

Q So you had $18,000,000 in other investments, approximately? That would be a reasonable approximation?

A I don't know. I said I don't know how much we had -- I don't think we had 18,000,000 in other investments.

Q Including Piper?

A 18,000,000 including Piper? I don't think we did. In fact, I am quite sure we didn't.

THE COURT: Was there any change between your investments on November 30, 1968, and January 23, 1969, other than the acquisition of the $10,000,000 of Piper shares?

THE WITNESS: Sure.

Q Prior to January 22?

A Yes.

Q What was the change?

A We bought some -- I am not sure if it was then -- I think we bought some Warner and some M-G-M stock. I don't think it was $8,000,000 worth of it, by any means.

Q Did you have Harley-Davidson stock at that time?

A Yes.

Q And you had Warner Bros. stock?

A I don't know. When did we have Harley-Davidson? I forget when we closed on that.

Q Harley-Davidson, you recall, you had under the option arrangement and you didn't sell Harley-Davidson until some time in May of 1969.

A So I didn't have Harley then in November. May of '69?

Q May of '69.

A I would have had Harley then. I forget the amount of Harley we had.

"Other investment now, $18,000,000." I don't know what that figure includes or would include.

Q Do you know what is meant by "Cushion, $15,000,000"?

A No.

Q Do you know what the "300,000 at $65" means?

MR. LIMAN: Mine says 66. Does yours say 65?

MR. RYAN: It is hard to say. It is either 66 or 65. It must be 66 if it is 19.8.

Q Do you know what that refers to?

A That sounds like $65 plus a dollar, I think, we paid in the commission -- that sounds like it refers to our tender offer.

Q But this does not at all refresh your recollection as to the condition of your senior notes at that time?

A No.

Q And the statement "You will reach restriction approximately next 227,000 shares of Piper," that doesn't mean anything to you?

A I am not sure what restrictions he is referring to there.

Q Could this be the point, Mr. Gordon, at which you did possibly become in default on your senior notes?

A I just don't recognize this document. I don't know if that is what this is talking about. Mr. Maxwell prepared a lot of documents on assumptions. He prepared a lot of documents that were erroneous, and this is one I don't recognize.

Q But you had no discussions in April of 1969 with IDS in which they may have claimed that you were in default on your senior notes during the course of your tender offer?

A No. They didn't refer to the time of the possible default.

THE COURT: How do you read the last two lines, Mr. Gordon?

THE WITNESS: I can't make them out. "If we get 15" -- I can't make out the next word.

THE COURT: Well, there is a thousand there, an M with a slash -- 15, 000,000?

THE WITNESS: 15,000,000. I can't make it out -- "bit"? And it is "plus every one" -- oh, "if we get 15 debt and everyone okays" --

THE COURT: Doesn't it say, "If we get 15,000,000 subordinate loan and everybody okays, we will be able to purchase 150,000 shares at 68 over the 300,000 tendered"?

THE WITNESS: I don't see the word "subordinated."

THE COURT: Well, skip that.

THE WITNESS: Is that the "sub" there, that underlined -- that could be "sub," yes, "15 sub debt plus everyone's okays, we will be able to purchase" -- that would indicate it is some kind of calculation to determine how many shares we could buy within certain limits of the senior debt agreement.

Q But you don't recognize the handwriting?

A If I could see something else of Winslow Maxwell's, it would help me. It sounds like Winslow Maxwell.

THE COURT: Now as of what date, if any, would such a calculation be pertinent?

THE WITNESS: I would have to look at the instrument. There frequently are references back to the last financials furnished, and you have to be in conformity with the provisions when you furnish the certificate, each -- I forget whether we were furnishing quarterly or semi-annual reports.

THE COURT: Was there an area of time along there, in March or April of 1969, when you were contemplating buying another 150,000 shares of Piper stock at $68 level?

THE WITNESS: At what time?

THE COURT: In March or April.

THE WITNESS: No. This last line indicates to me that it is a January document.

Win might have been asked to make that assumption and see how it looks. I wouldn't have known about it. He could have gotten instructions to see what that looks like.

I just don't know what assumptions this was prepared under.

MR. RYAN: I will offer in evidence Defendant's Exhibit T.

MR. LIMAN: Objection.

THE COURT: Objection sustained for the present, until we get further identification of its authenticity.

BY MR. RYAN:

Q Now, Mr. Gordon, you testified on your direct examination --

THE COURT: By the way, is that gentleman available as a witness?

MR. RYAN: I believe that we can get him, your Honor, yes.

He is no longer employed by Chris-Craft.

THE WITNESS: He should be available, your Honor.

MR. RYAN: But he is available.

THE COURT: Now if the only problem is the identification of the handwriting, perhaps through the statesmanlike efforts of all counsel somebody can show him this and find out if it is his.

If you want to find out about the contents, we

will have to have him.

But let's not call an unnecessary witness.

BY MR. RYAN:

Q Mr. Gordon, during the course of your direct examination, you testified that it was not until January 21st that you seriously considered going for control of Piper.

A Yes.

Q And it wasn't before that time?

A Well, I seriously thought about it when we started buying a lot of shares. I personally must have mulled it over in my mind, but the first serious discussion was January 21st.

Q Well, when you purchased the first --

A The first series --

Q When you first purchased the 5000 shares of stock on December 30, 1968, didn't you purchase those shares with the intention of getting control of Piper?

A No.

MR. RYAN: I want to hand up the deposition of Mr. Gordon taken by Mr. Wickenhaver, taken in Philadelphia.

Q Mr. Gordon, do you recall being examined by Mr. Wickenhaver in Pennsylvania on May 27, 1969, in the

Pennsylvania action?

A Yes.

Q And do you recall being asked these questions and giving these answers?

MR. RYAN: This is page 46.

Q (Continuing and reading)

"Q Was there any discussion at the board meeting prior to the first purchase of Piper shares?

"A No, I don't think so.

"Q Who made the decision to make the first purchase of Piper shares?

"A Well, the decision was, I suppose, made by Herb Siegel, after consultation with Jim Rocklis and myself, and probably Armand Eprf, and Virgil Sherill, and maybe some of the other directors. I am not sure.

"Q What was the reason given by any of the persons engaged in any of these discussions in deciding to purchase the shares of Piper rather than one of the other aircraft companies that you mentioned?

"A There were a lot of reasons.

"Q What were they?

"A Availability.

"Q Of what?

"A Of Piper Aircraft, the size of Piper, the fact

that it would -- the position of Piper in the industry, and it had a lot of room for improvement, its name was important.

"Were a lot of reasons why we made the decision to buy Piper stock.

"Basically we thought it would be a good investment and we would make it with a view to possible control."

Do you recall being asked those questions and giving those answers?

A Yes.

Q Were those answers truthful when he gave them?

A Yes.

Q Are they truthful today?

A Yes.

Q So your first purchase of 5000 shares were bought with a view to control, weren't they?

A All of our purchases were bought with that view, yes.

Q Now you testified, Mr. Gordon, that during the course of your exchange offer, in May or June of 1969, that you made some telephone calls to holders of Piper shares, inquiring whether they would wish to tender to Chris-Craft.

Do you recall that testimony?

A Yes.

Q And you testified that you called Mr. Ellsworth Buck.

Do you recall that testimony?

A Yes.

Q Do you know whether Mr. Buck is still alive today?

A He's dead.

Q And you knew that when you gave that testimony?

A Yes, I did.

Q Now how many other people did you call?

THE COURT: By the way, was that the man who was in the insurance pension planning?

MR. RYAN: He was a substantial person, your Honor. I am not exactly sure what business he was in.

MR. LIMAN: A former Congressman from Staten Island.

Q How many other Piper shareholders did you call?

A Four or five.

Q And do you recall the names of any of these people?

A No.

Q Do you recall the substance of any of the specific conversations you had?

A The substance was that they weren't going to tender.

Q Did they give you any reasons?

A They gave me a lot of different reasons. One --

Q Well, for the --

A One that stands out in my mind now is the $80 price that Bangor Punta was going to offer. I think one fellow told me that he wasn't going to tender to us, no way, no how.

Q Did he ask you whether you might raise your bid up above $80?

A Who? Ellsworth Buck?

Q No. I am not talking about Mr. Buck. I'm talking about these other conversations.

A I don't recall whether they asked me that or not.

Q Did any of them say they wanted to wait until they saw Bangor Punta's competing offer before they made up their minds?

A Yes.

Q Do you recall how many of these four or five people you recall made that statement?

A I don't remember the exact words that they used here, but I would say at least one or two people said they were going to wait for Bangor Punta's offer. I don't know that they were going to wait and see what it was. They all thought it was a $80 offer.

Q How do you know that?

A Because they told me.

Q They said itwas a $80 offer? Those were the words they used?

A No. That was the substance. I don't remember the exact words.

Q Now you testified yesterday that as the Bangor Punta's exchange offer was announced and their package of securities identified, Mr. Siegal made the statement that the forthcoming Chris-Craft offer would have to have a very high valuation and be a very strong package.

Do you recall that testimony?

A Yes.

Q And you also testified that the Chris-Craft or the board of Chris-Craft was advised that the package which they offered in their exchange offer, which opened,

I believe, on January 24th, was valued at between $90 and $100?

A That was the estimate of our savvy people, that's right, yes.

Q Who were the savvy people?

A Armand Erpf and Verge Sherill were the savviest. Jim Rocklis had some knowhow in this.

Q Did Mr. Erpf and Mr. Sherill indicate to you how they arrived at this valuation?

A Mr. Erpf did.

Q What did Mr. Erpf say?

A Mr. Erpf valued it by taking the preferred stock at its conversion price -- it was convertible into our common stock, which was listed. He took the warrants pursuant to a formula, and he took the cash at cash.

Q And --

A And he gave a premium for the preferred aspect of the preferred stock.

Q Neither your preferred stock nor your warrants were ever traded before, were they?

A No.

Q Did your package of securities ever sell at $90?

A No.

Q Did it ever sell over $73?

A That's a stipulated fact. I don't recall the highest price it reached.

Q Well, did the Curtis-Craft package ever sell during the course of your exchange offers --

A It wasn't selling then. It wasn't trading.

Q It started trading on January 24th, didn't it?

MR. ARNING: July.

MR. RYAN: Excuse me.

Q July 24th.

Isn't that when your offer opened?

A Our offer opened July 24th. I am not sure when the trading -- if the trading started then. I don't think it did.

Q Well, it certainly started by the next day, is that right?

A Then it sold only on a when-issued basis.

Q And what is the difference between a when-issued basis and when it is not on a when-issued basis, in the case of your securities?

A In the case of our securities there would be a discount factor for the risk that the securities would never be issued, plus a cash discount.

Q How could your securities never be issued?

Wasn't your offer a firm exchange offer?

A There are always uncertainties. Bangor Punta could have gotten an injunction.

THE COURT: The question was did it ever sell above $73 or $74, with all the things that you have mentioned?

THE WITNESS: It never -- did the package ever sell above that price? No.

THE COURT: What was that number? 73?

MR. RYAN: $73 is the figure.

THE WITNESS: That is the stipulated price of the package.

THE COURT: Are you suggesting that the uncertainty that somebody might come in with an injunction would be worth the difference between $73 and $90?

THE WITNESS: No. I didn't intend to convey that impression.

BY MR. LIMAN:

Q Well, when you fixed the price at 90, Chris-Craft fixed the price at 90, what was the reason that you wanted to fix the price at 90?

MR. LIMAN: Objection to the form.

THE COURT: Was there a reason?

Q (Continuing) Was there a reason?

A We didn't fix the price at 90. Our investment bankers gave us their estimate of what somebody else would value the package at.

Q Well, you and Mr. Siegel -- at least Mr. Siegel wanted a very high valuation, didn't he?

A Yes.

Q And why did he want a very high valuation?

A So our offer would be successful.

Q So you would have a higher offer than the Bangor Punta offering, is that the reason?

A So we would sell at a higher valuation than Bangor Punta's offer, yes. So we would top Bangor Punta's offer. That's certainly --

Q After you learned that your package did not have a higher valuation than Bangor Punta's package, why didn't you increase it?

MR. LIMAN: Objection as to the form, your Honor.

THE COURT: Did you take any steps to increase it after you learned of those facts?

MR. LIMAN: Objection to the form again, your Honor.

THE COURT: It is overruled.

I will change the word "facts."

After you learned of those circumstances.

THE WITNESS: I don't believe that it is accurate, the circumstances are accurate, that Bangor Punta's package was higher than our package.

We did not take steps to increase our offer, and you asked me why.

MR. RYAN: Yes.

BY MR. RYAN:

Q Why?

A We felt that we had gone as high as we could go.

Q You ran out of money, isn't that the reason?

A No.

Q Bangor Punta's exchange offer closed on July 29th, isn't that correct?

A Yes.

Q Chris-Craft's exchange offer was still open, isn't that correct?

A Yes.

Q You could have amended your exchange offer, couldn't you?

A Yes. It would have taken time, but we could have.

Q How much time?

A A few days. One day or two days.

Q You wouldn't have had to have any lapse; you could have continued right on, couldn't you?

A Yes.

Q In fact, your exchange offer which preceded the one which opened up July 24th you amended or extended four or five times?

A Yes.

Q Yet you decided not ---

A That's right.

Q Chris-Craft decided not to increase its offer?

A That's correct.

Q Now after the Chris-Craft exchange offer closed, you testified yesterday that between August 12th to August 18th, Chris-Craft purchased approximately 300,000 shares of Piper Aircraft stock on the market, is that correct?

A Between what dates?

Q August 12th and August 18th. That is a stipulated fact.

A Yes.

Q It was a stipulated fact?

A Yes. I am trying to place that time in my mind now.

Q Well, your offer closed on August 4th, and this --

A Right. I am with you.

Q And you testified further that you stopped after you bought 300,000 shares, because then you had your lawsuit, and if you were successful in your lawsuit and you were able to get one or two of the blocks of shares that Bangor secured, you would have your control, is that correct?

A No. I said that, and I also said that we stopped buying because we didn't think it was possible to buy the control. We had to buy two shares for every one of yours. It was --

Q Do you know how many shares Bangor Punta bought between August 8th and September 5th?

A I don't know the number. I know it must have been quite a percentage.

Q It was 110,000 shares, wasn't it?

A I will accept that.

Q And these shares were bought on the open market, weren't they?

A I question that.

That they were bought by Bangor Punta, that I know.

Q Is there any reason why you couldn't have purchased those shares, why Chris-Craft couldn't have purchased those shares?

A We couldn't both purchase them.

Q No. But these were shares which could be bid upon in the market, couldn't they?

A Yes, but Bangor Punta had to -- only had to buy one share for every two we had to buy. There was no way we could prevent them from outbidding us, and we would just wind up locking in our minority position at a higher price.

Q How did you know if you didn't try?

A We were advised that, and I was pretty sure of it. It was a logical thing.

Q Who advised you that Bangor Punta was going to get into a bidding contest with you to get control of the shares of Piper?

A Bangor Punta announced that that was its intention.

Q When?

A It was under a contractual obligation to obtain control.

Q To use its best efforts to obtain control; is that the language?

A Yes.

Q Do you say that included getting into a bidding contest?

A I would assume so, yes.

Q The fact of the matter is, Mr. Gordon, where was Chris-Craft going to get the $8 million or $10 million that was necessary to buy sufficient shares at the end of its exchange offer to get the necessary 50 per cent?

A Is that a question?

Q Yes.

A If it was possible for us to get the 50 per cent, we could have gotten the financing. There's no doubt whatsoever in my mind about it.

Q Did you ever try in August of 1969 to get that financing?

A No.

Q Now you testified, Mr. Gordon, that --

MR. RYAN: I will be through in a few minutes, I believe, your Honor.

THE COURT: I was going to suggest that you might want to go over until the morning for the balance of the examination.

MR. RYAN: I have 15 minutes to a half hour more. It is hard to say. I will go over, if you wish, your

Honor.

Now I believe that Mr. Arning has some examination too.

MR. ARNING: I would estimate about 15 minutes.

(Discussion off the record.)

THE COURT: We will recess now until 10.00 a.m. tomorrow morning.

In the meantime I am expecting that you gentlemen will, after your lunches, devote the afternoon to arriving at an agreement as to what of the agreed findings of fact are to be placed on this record as part of the record. Anything which is not added to the record, even if previously agreed upon prior to the trial, is not going to be deemed part of the record, so that I have one single record without incorporation by reference when this case is closed.

All right, gentlemen.

(Adjournment taken to March 11, 1971, at 10.00 a.m.)

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CHRIS-CRAFT INDUSTRIES, INC.
vs. 69 Civ 2227
PIPER AIRCRAFT CORPORATION, et al

BANGOR PUNTA CORPORATION
vs. 69 Civ 2354
CHRIS-CRAFT INDUSTRIES, INC.

S.E.C.
vs. 70 Civ 3940
BANGOR PUNTA CORPORATION.

New York, March 11, 1971;
10.00 A.M.

Trial resumed.

- -

C H A R L E S L E O N A R D G O R D O N, resumed.

MR. RYAN: May I begin, your Honor?

THE COURT: Yes.

CROSS EXAMINATION CONTINUED

BY MR. RYAN:

Q Mr. Gordon, do you recall on Tuesday testifying that other than the dividend that Chris-Craft received on their Piper shares in August of 1969, Chris-Craft had not received a single penny on its investment in Piper. Do you recall that testimony?

A Yes.

MR. LIMAN: Do you have the page?

MR. RYAN: 200.

Q Has Bangor Punta received anything on its investment other than the dividend declared on August 12th?

A You mean, in cash?

Q Cash.

A I don't know.

Q What do you mean by that answer: you don't know? Have any dividends been declared by Piper that Chris-Craft hasn't received?

A No.

Q Are you suggesting that Bangor Punta took funds out of Piper other than through a normal dividend?

A Yes.

Q How?

A Maybe expense accounts that are -- overhead shifted.

Q Do you know of any of those? Do you have any specific knowledge?

A No; I don't. That's why I said no.

Q You are a director of Piper Aircraft Company, aren't you?

A Yes.

Q Would you have declared a dividend, voted for the declaration of a dividend in late 1969 on the Piper shares?

A Yes.

Q Would you vote for a dividend on the Piper shares in 1970?

A At the present time I wouldn't. At the end of 1970 I wouldn't have, and at the present time I wouldn't.

Q Are you suggesting that in late 1969 and early 1970 it was not suggested that Piper Aircraft Company might be going into a loss period?

A Definitely it was not suggested that they were going into a loss period. We were very surprised when the loss came out. We were in profit until the last two months of 1969.

Q I am talking about 1970.

A They were in profit until the last two months of 1970, I believe -- I'm sorry. I was not speaking of 1969. I was speaking of 1970. They were in the black until the last two months of 1970. They wiped out -- they lost more than a million dollars in the last month. They wiped out more than two million dollars in earnings in the last couple of months, and I was quite surprised by it.

Q You were?

A Yes.

Q Weren't you receiving financial information?

A Yes; I was.

Q And are y-u suggesting that that information was not correct?

A They took very big writeoffs in the last months, the last two months, more than $3,000,000 or $2,000,000 in losses then. If I had the figures in front of me, I could handle this much better. But their losses were substantial in the last two months, and they were -- there were big writeoffs. I assumed that they were not correct, that they saved their writeoffs until the end of the month -- until the end of the year.

Q Did you ever indicate that to the other members of the board of directors?

A I indicated that the financials were not correct to the accountants. I wrote numerous letters on the subject, that the financials were not correct, that I suspected that they were not correct, yes.

Q Were those letters that you are just referring to -- were those referring to writeoffs of operating losses? Didn't those letters relate to the problem with the Twin Comanche?

A That was only one of the problems that they related

to, Mr. Ryan. They did relate to writeoffs, yes.

Q In fact, at that point of time -- and this is late 1969 and 1970 -- didn't you and the other Chris-Craft directors suggest that Piper Aircraft set up a reserve of over $5,000,000 on its books for the Twin Comanche?

A Mr. Ryan, the management of Piper --

Q Answer the question.

MR. RYAN: Please read the question.

A I can't answer it yes or no. I can answer it by saying that the management of Piper suggested it, and I suggested that that writeoff be taken until -- or at least a conservative writeoff be taken until the contrary be proven.

Q And even with that $5,000,000 write off or a conservative writeoff, you still are of the opinion that you as a director would have voted for the declaration of a dividend in late 1969?

A Yes.

Q Now, Mr. Gordon, you testified on your examination yesterday that you had discussions with several companies concerning possibly disposing -- Chris Craft disposing of their interest in Piper Aircraft Company. Do you recall that testimony?

A Yes.

Q And the first company you mentioned was City Investing Company?

A Yes.

Q Do you recall --

MR. LIMAN: Not the first.

MR. RYAN: Excuse me.

Q (Continuing) The first company we discussed was Bangor Punta.

A That's correct.

Q The first one you discussed other than Bangor Punta was City Investing Company?

A Yes.

Q Do you recall when the discussions with City Investing commenced, approximately? September, 1969?

A I testified, I think, September, 1969. I had notes with me --

Q And your exchange offer for the Piper shares closed on August 4, 1969, and do you recall that Bangor Punta's exchange offer became effective on August 8, 1969?

MR. LIMAN: July 18th.

Excuse me, your Honor.

MR. RYAN: What is that?

MR. LIMAN: July 18th.

MR. RYAN: No. Ended. Closed in August.

A No. It did not close in August. It closed July 29th.

Q It became effective August the 8th?

A No. You're still wrong. It became effective July 18th, Mr. Ryan.

Q Now, you know that on August 8th the stockholders of Bangor Punta voted the necessary approval to consummate the exchange; isn't that correct, Mr. Gordon?

A August 8th, yes. The exchange offer had expired by then.

Q Please, Mr. Gordon.

Now, Mr. Gordon, in your conversations with Mr. Scharfenberger, you mentioned that he was interested in only buying both Bangor Punta's and Chris-Craft's interest in Piper; is that correct?

A I think so.

Q And you also testified that Bangor Punta said that they would only sell their investment at cost; do you recall that testimony?

A Yes.

Q Did Chris-Craft indicate to Mr. Scharfenberger that it was prepared to sell its investment in Piper at less than cost?

A We said, "Me, too," after Dave Wallace said he

only wanted cost.

THE COURT: Did you say that you would take less than cost before Dave Wallace spoke?

THE WITNESS: Dave Wallace was the first to speak, sir.

THE COURT: Did you at any time indicate that you were willing to take less than cost?

THE WITNESS: To Mr. Scharfenberger or Mr. Wallace?

THE COURT: To Mr. Scharfenberger or to Mr. Wallace or both.

THE WITNESS: I don't recall whether we indicated that or not, sir. We were negotiating and --

THE COURT: Is there any record of this, by way of memorandum?

THE WITNESS: I don't have one, sir.

THE COURT: All right, Mr. Ryan.

Q In the course of the conversations with Mr. Scharfenberger, did he indicate what he was thinking about paying for Bangor Punta's and Chris-Craft's interest in Piper?

A I'm not sure whether he indicated a dollar figure or how he indicated it to us, but we came away thinking that he was going to pay only a very low figure.

Q In fact, that is exactly what you told David

Wallace, wasn't it?

A That's what David Wallace told me, and I agreed with.

Q The next company you mentioned was the Israel Aircraft Corporation.

A Yes.

Q Was Israel Aircraft Corporation brought to the attention of Chris-Craft by the general counsel, or was Mr. Gus Levy of Goldman, Sachs the first person who brought Isreal Aircraft into the picture?

A I believe I was the first person to bring it into the picture.

Q Did you ever have any discussions with Mr. Wallace concerning Israel Aircraft and its introduction to you?

A No.

Q Did Mr. Wallace ever tell you that Mr. Gus Levy had contacted him about Israel Aircraft?

A I don't recall that, although I think he may have told that to Herb Siegel. I don't know.

Let me clarify this. I made the first contact with Kenny Bialkin, and then Mr. Siegel made an independent contact, and I'm not famvliar with the facts of how he made that contact.

Q Now, the next company you mentioned was North

1433 A

American Rockwell.

A Yes.

Q Do you recall what happened to those discussions?

A They died.

Q And do you recall what the discussions were concerning the consideration to be paid by North American for Chris-Craft's and Bangor Punta's shares in Piper Aircraft Company?

A We were talking book, and I think we were talking some kind of security.

Q Whose book?

A The book of both companies.

Q Bangor Punta's and Chris-Craft's book?

A The price on their cost, in other words, book cost.

Q Bangor Punta's book cost and Chris-Craft's book cost?

A Yes.

Q Who made that offer to you on behalf of --

A There was no offer made, unfortunately.

Q Well, who was doing the discussing?

A Dave Wallace led the discussion.

Q How many meetings did you have?

A One with North American Rockwell people.

Q Did you have any meetings with anyone else con-

going for control, no.

cerning North American Rockwell?

A I met with this broker whom I referred to, Riener, and he then after the meeting followed it through, trying to earn his commission, and he got nowhere.

Q Do you recall the discussions with Northrup concerning their interest in Piper Aircraft Company?

A Yes.

Q Do you recall what the discussions were concerning what they had in mind to offer for the Piper shares?

A They never specified a price. I told them that we had been asking cost, but of course there was room for negotiation.

Q And regarding Grumman Aircraft Company --

By the way, how many meetings did you have relating to Northrup?

A One meeting and some phone calls.

Q Now, the next company you mentioned was Grumman Aircraft, and you testified that they offered you twenty to thirty dollars a share.

A Twenty or thirty. I don't recall the number.

Q Twenty or thirty?

A Yes.

Q For your Piper shares?

A Yes.

Q Were you prepared to sell your Piper shares for twenty dollars?

A I wasn't offered twenty dollars for my shares, sir. I was offered twenty dollars for my shares if Bangor Punta would sell at twenty dollars, and Bangor Punta wouldn't, so I never even considered the separate possibility.

THE COURT: What is your answer to the question?

MR. RYAN: Read the question.

(Question read.)

A I said I didn't consider the question. I wasn't offered the twenty dollars.

Q Now, the next or last company you mentioned was Mitsubishi, and Mr. Erpf advised you that he had several conversations with Mitsubishi. Do you recall the substance of those conversations?

A Mr. Erpf just said that he had approached them and talked to them. He was not a man to go into details on something like that.

Q Now, you also testified that each one of these companies were all interested in Piper only if they could obtain all the shares of Piper; is that correct?

A No.

Q Who else was interested in buying a portion of the shares of Piper?

A They were interested in Piper only if they could buy Bangor's block and Piper's block. Some of the --

Q Chris-Craft's block?

A Chris-Craft's block. Yes. That was only 93 per cent, sir.

Q And did you ever discuss selling your Piper interes with anyone else other than these companies?

A Did I?

Q Yes.

A I may have. I can't recall. Other than Bangor Punta. Are you talking about me personally or Herb Siegel?

Q You personally.

A No. Let me think for a minute. I can't recall any others.

Q Of the companies you mentioned, discussions you had with these companies, how many were initiated by Chris-Craft?

Let's go one by one. Was City Investing initiated by Chris-Craft?

A David Baird was involved in that, and I don't know whether that was his own activity or whether Herbert Siegel, who knew David for many years, talked to him. I don't know the answer to that question.

Q What about North American-Rockwell?

A North American-Rockwell was initiated by Ralph Reiner, but Reiner called me before he had initiated North American-Rockwell and I told him that we would be interested in selling. So that was, in effect, initiated by Chris-Craft.

Q What about Northrup?

A I don't know how that was initiated.

Q And Grumman, you testified, a broker called you concerning it, Dillon, Read?

A There again, there may have been a chain leading up to that, but I don't know it, I am not sure of it.

Q Do you recall --

A It was well known that we wanted to sell and that may have inspired the broker, Dillon, Read, to approach us.

Q Do you recall testifying yesterday that you decided some time in September, 1970, or shortly before that, that Chris-Craft no longer wanted control of Piper Aircraft Company and were going to pursue their claim for damages?

A I don't know if that is an accurate statement, Mr. Ryan. I think it is a misstatement.

Q Let me just read the question and answer, and I am referring to Pages 215 and 216. This is Mr. Liman questioning you.

"Q Yesterday, I asked you, at Page 186, referring

to the statement that in September of 1970 we were seeking damages:

"'What was it that led you to come to the conclusions that were reflected in my statement to the Court in September of 1970?

"'A During that period, up till then, we were trying to get into or get out, either to get control or get out of our position. By the time you made your statement, it became apparent that virginity could no longer be restored, the company had changed so that there was no way that control could make us whole, that that would not be an adequate remedy for the violations -- that was our claim, that that wouldn't be an adequate remedy for the things that had been done to us by Piper and Bangor Punta and First Boston.'"

Do you remember that question and that answer?

A Yes.

Q In answer to that question you were next asked by Mr. Liman: "What changes in the company were you referring to?"

Then you listed a number of changes.

A Yes.

Q Do you recall that testimony?

A Yes.

Q The first change you mentioned was that a new

president had been appointed at Piper Aircraft Company, is that correct?

A Yes.

Q Did you disagree with the appointment of Mr. Mergen as president of Piper?

A Yes.

Q And why did you disagree?

A I thought that we could get somebody stronger at this point in time.

Q Prior to Mr. Mergen's appointment, had you ever spoken to the man?

A No.

Q Had you ever been offered the opportunity to interview him by Mr. Wallace?

A Mr. Wallace said that I could and I said I wanted to. But an offer of the opportunity, I would say I had not been offered an opportunity; I had gotten general talk that I could talk to him.

Q You placed your conclusion that Mr. Mergen was not qualified upon something other than your personal interview?

A You are misstating it. I never said Mr. Mergen was not qualified. As a matter of fact, after election I said that I had voted against him, voted against some

presidents whom I thought turned out pretty good -- presidents of the United States I was referring to -- there is no question about his qualifications. The man is qualified and it is not fair for you to say it or imply he is not.

Q What about the new vice-president of sales, Mr. Gillespie, did you approve of his appointment?

A Yes. As a matter of fact, we recommended him and he joined me -- one of the reasons he didn't want to come to the company was he didn't think Mergen was strong enough for the company and I talked him into coming and I said, "Maybe you and Mergen together can be strong enough."

Q Then he was appointed with the consent and approval of Bangor Punta, correct? Isn't that correct? Bangor Punto cooperated?

A Definitely -- more than cooperated.

Q The next point you raised was that Mr. Piper was terminated as the principal executive officer of Piper.

A Yes.

Q Did you disagree with Mr. Piper's retiring as the principal executive officer of Piper?

A No. I disagreed with his continuing to draw his full salary, though, when he was not doing the job.

Q In fact you, and the rest of the representatives of Chris-Craft were very critical of the Piper management

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under Mr. Piper?

A Yes.

Q And you were insisting from almost the inception of the time you started buying shares "Let's get rid of the Pipers," isn't that correct?

A No.

Q When did that first start, shortly thereafter?

A Shortly thereafter.

Q The next reason you gave, Mr. Gordon, was that Piper was losing its share of the light aircraft market. Do you recall that testimony?

A Yes.

Q What do you base that statement upon?

A I read it in the newspapers.

Q The next reason you gave was that "The company's financial position has deteriorated, the company has been losing money every month this year and lost money last year."

Do you recall that reason?

A Yes.

Q Was Piper Aircraft the only company in the last year, year and a half that has been experiencing difficulty in making a profit?

A No, sir.

Q In fact, Chris-Craft has not been doing too well,

has it?

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A Neither has Bangor Punto.

Q You also testified that neither Beech nor Cessna lost any money.

A That's right.

Q What did you base that upon?

A Newspaper reports.

Q You were talking about, I assume, 1970 earnings of Beech?

A I was talking about recent financial information I had read in the papers. I didn't have any specific --

Q Well, in 1970, end of fiscal 1970, Beech reported an operating loss before taxes of $14 million. Does that refresh your recollection as to what you read in the paper?

A I think there were some write-offs of military business there. That doesn't refresh my recollection.

Q They sure didn't show a profit, did they?

A I think they did at some time.

Q And your other answer was -- other reason was that Piper entered -- they have entered into the military market. Do you recall that reason?

A Yes.

Q Didn't you vote for the resolution authorizing Piper to go into the military market?

A Yes.

Q You were enthusiastic, too, weren't you, looks very promising, didn't it?

A I said at the first meeting about that that the important thing about Piper, which was a dealer-oriented company like Chris-Craft is, is that you have to have product to feed your dealers, that the military aircraft would not feed your dealers, and I suggested that this might not be a good direction for Piper to take and I objected very much to some of the negotiating points in the contract, where they were going to pay a million dollars and several million dollars before they had a firm contract.

My criticisms on the terms of the contract were met. The contract was renegotiated very favorably to Piper. The Pipers were showing no immediate move to feed their dealers in other directions and I voted for it. I am not saying that this is a bad project, I am enthusiastic about it, but I am saying that is not the direction that I think that company should be going in- That company is in the light aircraft business and that is the direction it should be in.

If it is going into military business, it should be military business that improves its state of the art, but here it is going into military business where they are

manufacturing an out-of-date plane that is being updated and it is not going to improve their state of the art.

That was my judgment as a director of the company not as an expert in the field.

MR. RYAN: I have no further questions, Judge, other than yesterday Mr. Gordon indicated that his recollection was that Bangor Punta's investment in Piper was valued at approximately $70. Just so there is no misunderstanding, on our balance sheet, Bangor Punta's balance sheet for 1970, we carry out investment at $67,541,000, which comes out to approximately $80 a share.

However, a footnote to that balance sheet reflects the fact that $13 million of that has not been paid as yet and that may or may not be due, depending upon future events.

So that in fact, your Honor, we have invested approximately $54 million, which makes our average cost somewhere around $60, or something like that.

MR. LIMAN: I don't disagree with it. $13 milli I think you will agree refers to the claim of the Piper family under the May 8th agreement?

MR. RYAN: That is correct. I do have a copy of the annual report, your Honor.

THE COURT: Off the record a minute.

(Discussion off the record.)

CROSS-EXAMINATION

BY MR. ARNING:

Q Mr. Gordon, you referred to transcript of Tuesday, March 9, in this trial, Pages 136 and 137, and you indicated that in valuing your exchange offer on or about May 16, 1969, you used a formula of the conversion value plus 5 per cent premium for the preferred position and a formula for valuing the warrants which I am advised is referred to as the Levy formula. Those are mathematical formulas, are they not? There is no element of judgment involved once you decided to use those formulas?

A Yes. Well, there is an element of judgment in picking the formula in the first place.

Q Once you have decided that is the formula you want to use, there is no further judgment involved, it is a mathematical computation?

A Yes.

THE COURT: Who is Levy?

MR. ARNING: Gustav Levy, I believe, of Goldman, Sachs.

Q At any time between May 16 and July 24, when you again revised your exchange offer, did you run those computations again?

A I am sure we did. I don't have any specific

recollection.

Q Do you have a general recollection of the trend of those calculations or of the level of those calculations?

A Between what dates and what dates?

Q Between May 16 and July 24 when you again adjusted your percentage?

A Our stock was declining, as I recall, and so the trend in the calculations would have been -- the computation would have showed the downward trend.

Q At any time between May 16 and July 24, did you or your colleagues consider adjusting your offer in order to compensate for that decline or to increase your offer?

A From between May 16 and July 24, when we did increase it?

Q Yes.

A Yes, we thought about it.

Q But you decided not to?

A Yes.

Q I refer you again to the transcript of your testimony on Tuesday, in this trial, specifically to Page 106, the question beginning on Line 5:

"Q What was said on the number of shares to be tendered for?

"A Well, I said the object was to get control,

which was, I think, 620,000 shares. We had 200,000 and 620 more would give us control and Mr. Siegel said that the best way to get the 620 was not to put that number in the tender offer because people would be discouraged if the number was too high, people would be discouraged from tendering."

Then on the next page, 107, beginning at Line 6:

"Q Was there discussion of the right of overage?

"A Yes. There was never any discussion over it because the main object was to get 620. Right of overage was crucial to it. We didn't discuss it. It was settled at the beginning."

Both you and Mr. Siegel have been deposed in these and related proceedings on at least two or three occasions each, have you not?

A Yes.

Q You have also made filings with the SEC and filed affidavits in various legal proceedings?

A Yes.

Q Wasn't that testimony on Tuesday, Mr. Gordon, the very first time that either you or Mr. Siegel has ever said the objective of that tender offer was to obtain 620,000 shares?

A It is the first time I ever used those words, but it is not the first time that we have indicated that we were

going for control, no.

Q Wasn't it always before carefully worded that you wanted 300,000 to take a look or that you might move on from there or, as the phrase in your filing was, with a view to control?

A Your question is was it with a view to control?

Q No. My question is, didn't you say for the very first time in this courtroom last Tuesday that the objective of that cash tender offer was to obtain control right then and there?

A No.

Q Were you deposed in Pennsylvania on May 27, 1969, by a Mr. Wickenhaver, sir?

A Yes.

Q I refer you to your testimony in that deposition, Page 95, question beginning on Line 14:

"Q Was it your goal in considering a cash tender offer to obtain as many shares as possible?

"A I wouldn't characterize it that way, no.

"Q Was it your goal to set a number of shares for which you would tender to pick a figure of a number of shares for which you would tender that would result in obtaining the maximum number of shares?

"A Not necessarily, no."

Was that your testimony on that date?

A Yes.

Q Were those answers true?

A Yes. I was talking about the maximum number there. Here I am talking about majority.

Q But under the terms of your tender offer, Mr. Gordon, didn't you have the right to take all or any part of the overage?

A Yes.

Q If you had received a million shares you could still have elected to purchase only 620, 000?

A Yes, but our goal was not to take a million shares, our goal was to get to at least 620.

Q If you received a million you would get 620, wouldn't you?

A Yes.

Q I refer you to your testimony on that same date, Page 155, beginning on Line 10:

"Q Did you ask him for his opinion regarding this Grumman transaction?

"A I think at that time I did ask him. We were concerned that the price of Piper was falling, or had fallen, and the machinations of the Pipers was having an adverse effect on the stock. So the price of Piper may be significant

lower than the $65 cash tender offer that was out and that as a result we might have the whole company thrown at us in the cash tender offer. We were concerned about that."

If your objective was to obtain 620,000 shares, why were you concerned that you might receive more than 620,000 shares?

A I have alrea[illegible]fied, because I had not arranged for the money yet.

Q That is an interesting question too. If you really had as your objective obtaining 620,000 shares, don't you think that it would have been prudent to have arranged for that?

A I had arranged for it by the time the tender offer closed.

Q I am talking about January 22, when you were deciding what your objective was.

A It is prudent to arrange for it before you close the offering. It might have been more prudent to have arranged for it earlier, but I think it is sufficient to arrange for it before the offer closes.

Q You read Mr. Siegel's depositions in this proceeding?

A Some of them.

THE COURT: Was there ever any disclosure or filing

with the SEC of that philosophy of prudence in respect to that exchange offer?

MR. LIMAN: You mean the tender offer, your Honor?

THE COURT: Cash tender offer.

THE WITNESS: Of the philosophy of prudence?

THE COURT: Yes, the one that you just expressed, that you arranged for the money after the event or during the event --

THE WITNESS: Yes, that was specifically disclosed in the tender offer and the 13D that was filed.

THE COURT: What was specifically disclosed?

THE WITNESS: That we would make those arrangements for the additional shares.

MR. ARNING: May we see that, please?

(Pause.)

MR. LIMAN: This is the same as our Exhibit 34 for identification (handing to witness.)

THE COURT: Mr. Liman has given you Exhibit 34 for identification. What is the language you are calling to my attention?

THE WITNESS: It is in our Schedule 13D filed by Chris-Craft.

THE COURT: On what date?

THE WITNESS: On the 22nd of January. In Item 3,

source and amount of funds or other consideration, we say, "To the extent additional funds are required, Chris-Craft proposes to borrow from banks on a short-term basis. Arrangements for such borrowings haven't yet been made."

MR. LIMAN: Your Honor, this statement also appears in answer to your Honor's question, in the actual tender offer which is in evidence and it is one of their exhibits and I am not sure what the letter is.

MR. ARNING: I would like to refer you again to your testimony on Tuesday at Page 108 of the transcript, where you indicate, in Line 22, in one of your answers, that one of the reasons you did not want to put a higher figure in the tender offer was "If we were to go for 500,000 shares then we would have to disclose the fact that we had not yet arranged for financing."

Q Was that your answer on Tuesday, Mr. Gordon?

A What are you reading from?

Q From the transcript of this trial, the day before yesterday, Page 108.

A Yes.

Q Can we agree --

A I think I said more than that about that subject.

Q Yes, you did.

MR. LIMAN: What page is that?

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MR. ARNING: 108.

THE COURT: Read him the balance of the statement to see if it affects his answer.

Q The entire answer -- well, the question first:

"Q What was said on that subkect," -- which was the subject of financing.

"A I said it would be easier from the financing point of view. I said we had not yet arranged for financing for shares beyond 300,000 in the tender offer, that we would have to disclose in the tender offer. If we were to go for 500,000 shares then we would have to disclose the fact that we had not yet arranged for financing and that that was a minor point to argue for the 300,000 shares rather than the 500,000 shares."

That is the complete answer.

A I should have said, "Emphasize our disclosure," rather than "disclose."

Q Can we agree at least, Mr. Gordon, that you have never before in any of these depositions or filings described obtaining 620,000 shares as the main objective of that cash tender offer?

A I have been deposed, as you said, three different times over the last year and a half. I don't know if I have been asked a question that would call for an answer

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to that effect or not. If I had been, I would have given that answer.

THE COURT: You mean to say that nobody in the last couple of years asked you what your objective was?

THE WITNESS: They didn't ask me a lot of things that surprised me.

THE COURT: Wasn't that what the whole controversy was about? They didn't ask you what you were up to?

THE WITNESS: They knew what we were up to, your Honor.

THE COURT: They didn't ask you?

THE WITNESS: They knew we were after control, your Honor. This is all nonsense.

THE COURT: What is nonsense, the fact that you never mentioned 620,000 was the objecti ve?

THE WITNESS: Well, to control, your Honor, could mean a majority -- certainly in most people's minds --

THE COURT: In describing all your talk around the figure 300,000 instead of disclosing that your main object was really 620,000 in that cash tender offer -- it is one thing to have a view and it is another thing to have a plan. One looks down the road and the other one is something you are going to carry out.

THE WITNESS: We had two plans, at least, your

Honor, and that is where the concept of view comes in. If all we had was a plan to acquire 620,000 shares, we could have said that, but that is not an accurate description of what we intended at that time or it is not a full enough description. We might have taken, for example, 500,000 shares which would have put us in a position to certainly get the balance, we thought. We wanted to be in a position to sell, if we could see that it was advantageous to get out or necessary to do so. You can foreclose yourself from alternative actions by saying "This is our intention," and you can drive yourself crazy trying to discuss all the possible alternatives that there might be.

It is out of that desire to disclose fairly in the best fashion what we were doing that we came up with the language, after much thought, a view to control.

THE COURT: Do I gather from your statement that it is desirable to remain ambiguous so that the public markets will be subjected to ambiguity rather than definition?

THE WITNESS: Not at all, your Honor.

Q There can be only one main objective, can't there?

A Oh, no.

Q There can be more than one principal objective or main objective?

MR. LIMAN: Objection to the form.

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MR. ARNING: Withdraw the question.

Q I would like to explore the reasoning you advanced for putting the 300,000 share limitation in there. First let's be clear precisely what it means. As I understand it, you were, Chris-Craft was, legally bound subject only to certain composite conditions to buy every share tendered if fewer than 300,000 were tendered, is that correct?

A Yes.

Q If more than 300,000 shares were tendered, you had the option on the balance?

A Yes.

Q In excess of 300,000?

A Yes.

Q That is what you referred to as the right of overage?

A Yes.

Q You advanced as the reason for that the market psychology on cash tender offers, as I recall it, which was the tendering stock here, very naturally doesn't like to give people an option on his stock but he wants to know whether then it is tendered it has in fact been sold, is that true?

A That was the main reason, yes.

Q Along the same lines, the tendering stock here is going to be less happy if there is a chance of a pro rata

allocation in which he might get 15 shares back out of the 100 he sends in? That was a consideration?

A That is the same consideration.

Q In other words, the more certain a man is that his shares will be purchased, all of them will be purchased, the more attractive the tender offer?

A Yes.

Q If you had the ideal tender offer, then, there would be no limit at all, you would be absolutely bound to take every share that came in, from the point of view of the tendering stockholder?

A No. The ideal tender offer would be one that the tendering stockholder would be successful. In some instances maybe your ideal would produce the opposite result.

Q How can that possibly be? He is certain that you are going to take his shares, there is no question of degrees of certainty and you are absolutely bound. Now, how could you get a better tender offer than that?

A Well, if Bangor Punta were to tender for General Motors, 100 per cent of the shares, that would not be successful. If Bangor Punta were to tender for 1000 General Motors shares, that would be successful.

Q You mean because the public would have doubts that they could finance it?

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A I think they might.

Q Was that the reason you put the 300,000 share limitation in there, because the public would doubt that Chris-Craft could buy 500,000 or 600,000?

A No. We did not want, however, Piper to emphasize the fact that the financing for the shares beyond 300,000 had not yet been arranged -- to emphasize that successfully, because we knew we could arrange it, but we didn't have it at that time.

Q So it was to deprive the potential opposition of an argument that you set the figure of 300,000?

A That was a minor reason -- not to deprive them, but to reduce the efficacy of that argument, which was, in my opinion, not a good argument.

Q You were deliberately obscuring your real intent?

A When you say with a view to control, everyone knows what you mean. We were not obscuring our original intent. We wanted to also leave ourselves --

Q You wanted an option, and that is what you asked for?

A No. We wanted to avoid being accused if we sold of having had that intent in mind all the time, because we had had the experience in a previous tender offer where we were unsuccessful ultimately and we did sell.

Q Was there anything that prevented your going to Mr. Berman two weeks earlier than you did and making the same arrangements he testified to you made on the 30th and 31st?

A You are referring to Mr. Burnham, not Berman?

Q Burnham, yes. I am sorry.

A Three weeks earlier?

Q Sufficiently earlier so that you could have had your financing?

A I did have my financing.

Q If you had your financing, then why would the public vouch your credibility --

A There was something that prevented me from going to Mr. Burnham before the 22nd, and that was that we had not decided to do this before the 22nd. This was a last-minute decision and the annual meeting was coming up and we didn't have the time to see Mr. Burnham and arrange for that. It happened between the evening of the 21st and the morning of the 22nd, and we were awfully busy during that period, believe me.

So that we could not have seen Mr. Burnham prior to that time.

Q There is no point in arguing that point further,

but in theory on your reasoning and your discussions on the 22nd, isn't it true that the more the likelihood of a pro rata allocation the less attractive the tender offer?

A Yes.

Q Isn't it just mathematically obvious that there is a greater chance that you will have the right to force a pro rata allocation upon people if that figure is 300,000 than you would have if it was 600,000?

A There is that argument.

Q No question of argument, it is a truism, isn't it?

A Will you repeat the question?

Q The chances of Chris-Craft having the opportunity to force a pro rata allocation on the tendering stockholders is greater when that figure is lower and it is less when the figure is higher?

A No. There is a bandwagon effect. When I say that is an argument, it is not a truism -- there is a contrary argument. There is a bandwagon effect too.

Q What you are saying, I take it, is that the stockholders act emotionally rather than logically. Is that what youwere relying upon?

A No.

Q What do you mean by the bandwagon effect? It wouldn't change the legal conditions, would it?

THE COURT: I don't think you should pursue this line. It is just --

MR. ARNING: I will withdraw the question, your Honor.

Q Did you consider, on the 22nd, the 23rd or even the following Monday, going to Mr. Burnham and arranging that financing and then amending the cash tender offer?

A On the 22nd?

Q Any time in the first few days, when the cash tender offer first started.

A I thought about seeing Mr. Burnham sometime shortly before I saw him. I don't really recall how much before. It might have been a week.

Q Did he ever --

A A few days.

Q Did you ever give consideration to amending the tender offer, to taking the step that would involve

arranging the financing and amending the tender offer?

A As I recall, the price of Piper stock was up. I don't -- I don't think it occurred to me until -- that I was really sure we were going to get those additional shares in until the Grumman announcement, and that was on the 29th.

It was that four-point drop in the stock that really precipitated my seeing Mr. Burnham at that point in time, and that was almost -- the tender offer expired on the following Monday, which was when he confirmed the Funds' availability.

Q When you were considering on the 22nd with colleagues in conference fixing that 300,000-share figure, was any consideration given to perhaps amending it, since there was no time to do everything that you wanted to do right then?

A Amending it in what respect?

Q The same respect that we are just talking about here: of increasing that 300,000-share figure.

A Was any consideration given to amending it at the time we made it?

Q Yes.

Did anyone say, "Well, we can always amend it and increase it"?

A I think those were my exact words. I think I said, "We can always amend."

Q But then youdidn't do anything about it until following the drop in the price, the following week, a week later?

A We never did amend.

Q But you did take the step? I am talking about both Loeb, Rhoades and Burnham.

A We could always amend -- it wasn't stated necessarily -- I don't recall saying it in connection with the financing.

I remember saying it. I remember those exact words. Apparently you have worked on these, too.

Q You just said that it was a different principle.

A That was something I said to almost everything that was in there. We can always amend. I would have said it to the number of shares, and I might have said it the financing.

I don't really recall.

MR. ARNING: I have no further questions, your Honor.

THE COURT: Any further cross?

MR. PENNOYER: Just one question.

CROSS EXAMINATION

BY MR. PENNOYER (CONTINUED):

Q Mr. Gordon, in the copy of the offer filed with the SEC, which is Defendant's Exhibit E in evidence, I am going to read to you from a description of Chris-Craft's purpose in buying Piper shares.

"Chris-Craft is purchasing the Piper shares for investment with a view to control of Piper but does not presently have any specific plan or proposal to liquidate Piper or to acquire control of Piper."

Now, sir, if it was your intention to take 620,000 shares if tendered, would that be a specific plan to acquire control of Piper?

A It would be -- it wouldn't be a specific plan if you don't have the financing arranged for at that time. I think --

Q Would it be a specific proposal to acquire control of Piper?

A It would be a part of the -- of what I considered to be a view to control, which is disclosed in this very same document.

You didn't read the whole sentence here, and this is -- talks about specific plan or proposal to

liquidate Piper or to control, or to acquire control of Piper, sell its -- and then there is a comma there, not a period, as you read it, and I had said:

". . . sell its assets or merge with any other companies or make any other major change in its business or corporate structure."

When somebody wants to know about how many shares you are buying, with a view to control, I think it gives them a full picture of what our concepts and plans were then, and to pull one phrase out of context now and ask me its meaning I don't think is fair.

MR. PENNOYER: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Gordon, when you made that tender offer, you understood that you were not committing Chris-Craft to take 620,000 shares, is that correct?

A That is correct.

Q And when you changed --- you were shown as a defendant exhibit here a draft of a 13-D which had as its statement that you were seeking control, and then you have the final one, which uses these words: "with a view to control."

A Right.

Q Will you tell me how that change came about?

A Well, the first draft was done by Cravath, and they hadn't been told the number of shares that we were going for then.

I don't know what they assumed. They could have assumed that 620 was going in there. But at any rate I didn't ask them what they assumed.

And when it came up to me, I suggested the change.

Q Well, Mr. Gordon, if I show you Defendant's Exhibit D, when this was prepared by Cravath, did it have the numbers in it?

A No, it did not.

Q And was the change in the language in the draft which said:

"Chris-Craft intends through this offer to acquire control of Piper" to the language in the final tender offer occasioned by the --

A Yes.

Q -- inclusion of the number 300,000 shares?

A That's right.

Q Why?

A Because if you intend to get control, you could

be deemed to committing yourself to acquire a majority of the stock, and I didn't want to give that impression because we were not in fact committing ourselves.

Q And the fact is that as of the time you published this offer, you were not prepared to make a binding commitment to buy 620,000 shares?

A You can't make the binding commitment until you have arranged for the funds.

Q Now, Mr. Arning I believe read to you from your testimony in Pennsylvania by Mr. Wickenhaver, a question and an answer, your answer ending with:

"We were concerned about that."

I will ask you whether you were asked, immediately following the answer which Mr. Arning read, the following question and gave the following answer:

"Q Why were you concerned about that?

"A We didn't have much money."

A Yes.

Q And what did you do as a result of that concern?

A We arranged for the money.

Q Now yesterday you were questioned by Mr.Ryan concerning this Exhibit T for identification with respect to this handwritten exhibit.

Have you, over the recess, made some efforts

to identify this further and to interpret it?

A Yes, I have.

Q And can you tell the Court what you have done and whether you are in a position to tell the Court what this document is, who prepared it, when and why?

A Yes, I am.

Q Okay.

A I reflected -- I studied it, I thought about it, I called Winslow Maxwell and talked to him about it.

He did not have a copy of this in front of him, and I just was able to get him before court, but he recalls this document.

Q Now what is it and what does it mean?

A It's a calculation of the interest coverage restriction and the other investment limitation in the five and three quarter note agreement of Chris-Craft Industries, and the top part shows how much is available for interest clause -- and that would be earnings available.

It was an interest coverage with a special test. I forget the exact details of it, but you add back taxes, and so on.

THE COURT: Will you give some indication of the approximate time or date that this --

THE WITNESS: Yes. This was prepared during the period of our cash tender offer, while it was outstanding.

THE COURT: Did he say at whose suggestion it was prepared?

THE WITNESS: Yes. Mine.

THE COURT: Does that refresh your recollection that you were the one that caused it to be prepared?

THE WITNESS: After I went over it with him, yes, it did.

BY MR. LIMAN:

Q Would you go on and tell the Court --

A Yes.

Q -- about the circumstances --

A The amount at the top shows what the interest -- the income available for the interest coverage. Then it shows the interest payable in total debt, which was the test prescribed, and then it says, "Already over-restriction," with an exclamation point.

Being already over the restriction is neither an event of default nor is it something in event of default with notice of passage of time.

Then it says, "Amount available with other investment," and then it shows that we have a cushion of

$15 million available under the other investment clause, and it says, 300,000 Chris-Craft Piper at 66,198.

Then it says, "Therefore, you will reach restriction after next 227,000 shares of Piper."

What that means is that with the other investment clause, it restricted positions in other companies up to where we owned 50 per cent of the other company. If we had a majority of the other company, it did not restrict us. We were allowed to have majority positions, but we were restricted with respect to minority positions. And what I was trying to find out was, where did the restriction come into play between, say -- this showed that the restriction would come into play between 727,000 shares and then 820, and so it would disappear, and so would that at 820,000 shares.

If we were in that position, we would have a problem.

Then it says, if we get 15 million subordinated debt and everyone okays, we will be able to purchase 100,000 shares at 68 over 300,000 test.

That is in response to a question, if we get only 300,000 in the tender offer, and we improve the price by three dollars, how would that look, make those assumptions.

I always told him to make assumptions, "Making those assumptions, how would the restriction come into play?"

And what he is telling me is that it would come into play -- it wouldn't come into play -- it would come into play at 150,000 shares rather than 227,000, because of the difference in price.

Q Now when did you ask him to prepare this document?

On what occasion? Do you have any recollection of it?

A I used to ask him to make assumptions and prepare things for me, and I really --

Q Was it after --

A I didn't remember this document at all yesterday.

Q Do you know if it was after the tender offer closed or before it closed?

THE COURT: He just got through saying it was within ten days of the tender offer.

A That's possible, that it was immediately afterwards.

Q But you don't know?

A I don't know.

Q And as to this, Mr. Maxwell has told you on the telephone that without seeing it he remembers preparing such a document, and you think this is his handwriting, is that correct?

A I still don't recognize his handwriting, but he remembers the document.

MR. RYAN: Excuse me, your Honor.

I now renew my offer of Defendant's Exhibit T, your Honor.

MR. LIMAN: No objection.

THE COURT: Admitted.

(Defendant's Exhibit T for identification received in evidence.)

Q Yesterday at page 224 of the transcript Mr. Pennoyer read to you from an affidavit which was in the Grumman action.

Do you recall what the occasion of the affidavit was?

A Yes. It was an antitrust action.

Q What was the motion that your affidavit was submitted on?

To refresh your recollection, if I told you you moved for a temporary injunction there --

A Yes.

Q Now Mr. Pennoyer read to you from the affidavit as follows. This is at 224:

"Grumman competes with Piper in the production and sale of general civil aviation aircraft, atagricultural aircraft, military aircraft and component parts for general aviation and military aircraft."

Would you look at your affidavit and tell me whether -- referring to that paragraph -- there is something that follows the words that I have just read?

A "The military planes and parts (Exhibit A, page 7)."

Q Now what does Exhibit A, page 7, refer to?

A The Piper annual report.

Q And what was page 7? Was that the table that we referred to yesterday?

A Yes. Military aircraft -- military, it said.

Q Would you again look at that affidavit and Mr. Pennoyer, do you remember him asking you at Page 227, the following question:

"Q Did you say in the same affidavit submitted to the Federal Court in Brooklyn, 'Piper manufactures aircraft for the same purpose, including the 18-passenger Pocono.'"

"A Yes."

Q Do you see that reference to that in this affidavit?

A Yes.

Q Would you read the full sentence from the affidavit as you submitted it?

A "Piper manufactures aircraft for the same purpose including the 18-passenger Pocono, (Exhibit A, Pages 4 and 5)."

Q Would you tell the Court what Exhibit A, Pages 4 and 5 are?

A That is the annual report, I think it was -- I think it was the annual report. I am not sure. This is notmarked, Mr. Liman.

Q Yes, it is.

A Oh, yes. It was the annual report.

Q What was the portion on Pages 4 and 5 you were referring to in making the statement that it was manufacturing the Pocono?

A It says "Largest aircraft ever built by Piper, the

18-passenger Pocono, took off for the first time in May at Vero Beach, specifically designed to capture a large share of the rapidly growing and third-level commuter air service market," and there was a big picture of the Pocono stretching over the two pages.

Q Over to Page 5?

A Yes.

Q You testified at Page 250 that you never asked your institutional lenders for waivers -- when I say your institutional lenders, I think we also call them note holders here -- for waivers to borrow in excess of $15 million short term. Can you tell the Court why in connection with your discussions with Burnham & Company you didn't ask your note holders for waivers?

A I am not sure that I needed waivers at that point, but if I had --

Q When you say you are not sure, if you had borrowed that money would you have needed waivers?

A Yes -- well, it depends on the exact positioning we were in.

Q Had you gotten 51 per cent, would you have needed the waivers, of Piper?

A I am not sure I would have.

Q Why didn't you ask for waivers, anyway?

A I needed a waiver because -- why did I?

Q Why didn't you ask for waivers?

A Why didn't I?

Q Yes, sir.

A Because I was sure I could have gotten them. I didn't need them. I didn't borrow that money.

Q How do you go about getting waivers -- strike that.

Have you from time to time dealt with the note holders with respect to waivers?

A Yes, frequently.

Q Do you handle that?

A Yes, I do.

Q How do you go about it?

A I call them on the telephone and ask them for it and then they either give it to me or we negotiate and then they give it to me.

Q If your tender offer was to expire on February 3, can you explain to the Court how you would have had the time over the weekend to borrow the money, to get waivers, if you needed waivers, prior to the closing of your tender?

A If we had extended the tender offer we would have had until March 25, under the terms of the offer.

Q When you say if you would have extended it, what

are you referring to?

A The tender offer.

Q What about the tender offer?

A I am referring to the provisions of the tender offer.

Q Are you saying that under the tender offer you could have extended --

A We could have extended until March 25 and the shareholders would have had the right to withdraw only after March 25, if we had not closed it by then.

Q So that during that period you had up to March 25 to get your financing, are you saying?

A Yes.

Q And that during that period people who had tendered up to February 3, could not withdraw?

A That is correct?

Q Is that the terms of the tender offer?

A Yes.

Q There was testimony at Page 253 about your meeting with Mr. Loeb and Mr. Erpf on January 30.

A Yes, sir.

Q What was the purpose of the meeting and what happened?

A The meeting was to discuss raising additional funds

to buy excess shares that might be tendered over the 300,000, and they indicated that the money would be available, and I then suggested that I go to Mr. Burnham because I felt that he could move faster, which I did.

THE COURT: Did you tell Mr. Burnham that you had discussed getting the money from your traditional bankers when you went to see him?

THE WITNESS: No.

Q Had you had a relationship with Mr. Burnham before, Mr. Gordon?

A Yes, I had.

Q What was that relationship?

A At Marshall Bratter, that was one of my major responsibilities, was the representation of Burnham& Company. The firm had a tie-line to Burnham & Company and I was on the phone constantly, was there constantly. I knew them very, very well.

Q Had you ever made any efforts to recommend Burnham & Company as the investment banker of Chris-Craft?

A Yes, I had.

Q You had no prior relationship with Loeb, Rhoades, is that fair to say, before they became underwriters of Chris-Craft?

A Yes.

THE COURT: Are you suggesting by these responses that Loeb, Rhoades was sticky about coming up with any money for you?

THE WITNESS: They were not sticky, sir, they were not speedy. They definitely were not sticky. I think I said that they said that the money would be available.

THE COURT: On what conditions?

THE WITNESS: They didn't discuss conditions with me.

THE COURT: How did you gather the inference that they wouldn't move with the celerity that you had in mind?

THE WITNESS: Because we didn't discuss details.

THE COURT: I don't understand why you have a discussion with bankers who give you the green light and you go off to another banker. What is the explanation of that?

THE WITNESS: I only felt we had a yellow light, your Honor.

THE COURT: What was it that they said that indicated any reluctance, diffidence, or dragging feet?

THE WITNESS: I don't want to characterise Loeb, Rhoades as being reluctant, diffident or footdragging. I felt Burnham could move faster, your Honor.

THE COURT: Why did you go to Loeb, Rhoades in

the first place?

THE WITNESS: Because they were our bankers.

BY MR. LIMAN:

Q At Page 256 and Page 257, you were questioned by Mr. Ryan to the point at which you reached the conclusion that you could not liquidate your position without a loss, and you were asked these questions and gave these answers:

"Q What occurred in July that brought you to that conclusion?

"A In May Bangor Punta had contracted to acquire the Piper shares, it purchased other shares on the open market and was no in the process of making -- was then in the process of making an exchange offer.

"Q Are you saying that you concluded then that Chris-Craft could not liquidate without loss because Bangor was then trying toget and competing with you for control?

"A They seemed to be succeeding, at that point."

Do you remember giving those answers to those questions?

A Yes.

Q What was it that brought you to the conclusion that if they seemed to be succeeding that you could not liquidate your position without a loss, whereas before you

testified that you thought you could or might be able to?

A Well, if they were successful in acquiring 51 per cent we felt that they would be our only customer to sell the stock and we went to them before their exchange offer expired and asked them if they would extend their exchange offer if we would -- that we would tender our shares -- we suggested to them we would tender our shares in their exchange offer if they would extend their exchange offer to take us past that six-month period.

Q You never offered to tender your shares, did you, Mr. Gordon?

A Well, we -- no -- without more, no. But we asked them if they would extend their exchange offer so that we could tender our shares.

THE COURT: Will you read back the questions that started this and the answers, please?

(Record read.)

Q Was Bangor Punta's exchange offer closed before you had your six months on the tender offer?

A Yes, it was.

Q You have heard the date August 7th as the date of their annual meeting. Had they extended their exchange offer to after their shareholders approved their exchange offer on August 7th., would you have been past your six-

month period on your tender offer?

A Yes.

THE COURT: What was the date that you gave your proposal or suggestion to Bangor Punta about their extending the offer?

THE WITNESS: July 29.

THE COURT: And what was their response?

THE WITNESS: Well, Mr. Flick said that was a very interesting proposal -- we also wanted an underwriting to get us out of these securities. We would have a big block then of their securities. Mr. Flick said, "That is a very interesting proposal," and we learned of his response -- we were waiting for him to get back to us and we learned of his response when we learned that they closed their tender offer without extending it.

We were very surprised.

Q You remember Mr. Pennoyer asking you whether it was Dave Wallace who shelved the Pocono project. Do you remember his questions to that effect?

A Yes.

Q Do you know to this day who made the decision to shelve the Pocono?

A No.

Q Did you in any way participate in that decision?

A No. I learned about it.

Q Were you consulted about that decision?

A No.

Q What I am getting at, this isn't a case where as a director you voted to close a project just to sue on it, is it?

A No.

Q The plant that was built for the Pocono, is that being used now, so far as you know?

A So far as I know, it is still idle.

Q You said that you were shocked, in answer to some questions by -- I think, Mr. Ryan -- this morning, about the fact that Piper lost money in the fiscal year ended September 30,1970.

A Yes.

Q Did you get reports from Piper regularly during that fiscal year?

A Yes.

Q As a director of Piper?

A Yes.

Q How frequently did you get them?

A I believe I was getting monthly reports.

Q Up to the last months of the year, did it show a profit being earned by Piper?

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A Yes.

Q Had you ever asked the directors to declare a dividend after August 1969?

A Yes.

Q Who and when?

A I asked Mr.Salgo to declare a dividend.

THE COURT: When was that?

THE WITNESS: It would have been at the time of their next quarterly dividend. It might have been November --

Q Was it November or December?

A Well, it would have been some time prior to the actual dividend date.

THE COURT: What did you suggest to Mr. Salgo in November or December of '69?

THE WITNESS: I suggested that he declare the regular quarterly dividend, that the history of the company indicated that it did not suspend its quarterly dividends when its earnings varied -- fluctuated in the way they were fluctuating at that point in time.

THE COURT: What was the fluctuation at that time?

THE WITNESS: I think they were ~~drawn~~ down somewhat, but they were certainly not in the red.

THE COURT: What dividend did you suggest they declare?

THE WITNESS: Regular quarterly dividend.

THE COURT: In other words, you didn't feel that the operations at that time were such as to take a pessimistic view of the dividend; is that right?

THE WITNESS: Not at that time; right.

THE COURT: This was after you learned all about the Comanche and its terrible losses and various other things that were connected with the matters you testified to; is that right?

THE WITNESS: That's right. We discussed Twin Comanche at some length and its effect on that point.

THE COURT: So that on a global basis, you didn't

think that Comanche meant very much to the general scheme of operating Piper, did you?

THE WITNESS: Not at all. It was a problem of such magnitude that if -- that if it meant the kind of retrofit that we were worrying about, then it wouldn't make any difference on the 35-cent dividend, and if it was smaller, then -- it was just like a Sword of Damocles. There was really no way to determine the impact of that. You certainly couldn't determine it in terms of 35 cents times 1,600,000 shares, which is a small amount of money.

THE COURT: But the word that would go out to the stockholders was that business was as usual, and there was nothing extraordinary that you as a director were worried about; isn't that so?

THE WITNESS: Your Honor, I asked that the facts about the Twin Comanche be disclosed, not only to the shareholders but to the student pilots who were flying this airplane.

THE COURT: Wasn't there something inconsistent in that pressure on your part and going to Mr. Salgo and saying, "Let's have the dividend as usual"?

THE WITNESS: Our discussions -- my discussion with Mr. Salgo was right around that point: whether it was inconsistent or not. I argued that it wasn't incon-

sistent, because of the difference in magnitude of the two problems.

THE COURT: What was the situation of Chris-Craft --

THE WITNESS: I also --

THE COURT: -- as far as its cash reserves were concerned at the time that you were pressing for this 35-cent dividend?

THE WITNESS: I would have to look at our financial position.

THE COURT: Was the 35-cent dividend a significant amount on your cash position, considering the number of shares that you owned in November and December of '69?

THE WITNESS: I would think so.

Q There is no doubt, Mr. Gordon, that you could use that money; is that right?

A No question -- no question about it.

Q And if you multiplied it by the full year, that meant a lot to Chris-Craft?

A Yes.

THE COURT: What did Mr. Salgo say to you about the dividend when you pressed him for it?

THE WITNESS: He was against paying it.

THE COURT: Did he give you his reasons?

THE WITNESS: Yes.

THE COURT: What were they?

THE WITNESS: He was afraid of the Twin Comanche, the size of the reserve. He said that he certainly would be against paying any dividend until the Twin Comanche problem -- well, he said he would be against paying any dividend while the Twin Comanche problem was unresolved. He meant unresolved by setting up a reserve, I think.

THE COURT: All right.

Q After the reserve for the Twin Comanche was fixed at, I think, a quarter of a million dollars, did Piper declare a dividend?

A No.

Q Do you remember that at the meeting of the board of directors of Piper on November 6, 1969, Mr. Salgo stated -- and this is from the minutes kept by Mr. Flick -- Mr. Salgo stated that, "In view of the financial questions still under consideration, he would recommend that the board of directors not act on the payment of the quarterly dividend until the next meeting of the board, to be held not later than December 4, 1969. The members of the board unanimously agreed and adopted Mr. Salgo's recommendation."

Do you remember that?

A Yes. I agreed to it at that point in time.

I was incorrect in saying that I opposed it.

Q And what were the financial questions under consideration, Mr. Gordon?

A The Twin Comanche reserve.

Q Now, when the board met next, did it declare the dividend?

A No.

Q And it has never declared a dividend since that date?

A No. It was after the reserve had been set up, I believe, that I argued for a dividend.

Q Now, was there anything in the Piper reports that you read or in any of the discussions that you had as a director that ever indicated to you that the payment of a dividend was contingent upon the success of the Pocono?

A No.

Q When was the Pocono expanse written off? Were you told?

A Yes. I believe it was written off in 1969.

Q And ih 1969, Piper still showed a profit?

A Or September -- no. Wait a moment. I might be off a year on this. September was when they told me -- was it September? -- January, February -- Yes. It was written off in 1969.

Q There was a finding, an admitted finding on it, that I shall read. This is No. 204.

"The Pocono project was formally abandoned by Piper during August of 1969, at the request of Bangor Punta. The Lakeland plant, 95 per cent completed by September 30,1969, had remained idle. In the period 1965-1969, Piper incurred developmental expenses related to the Pocono of _____ dollars" -- the figure was to be furnished, I believe -- "and we were currently charged in the years incurred. In addition, a reserve was set up to cover potential cumulative charges."

So that the write-off was all by the end of the fiscal 1969 year?

A Yes.

Q And in that year, Piper showed a profit?

A Yes.

Q And has anybody ever advanced to you, as a reason for not paying dividends in 1970 their expenses on the Pocono being written off in '70?

A No.

MR. LIMAN: May I have the small book with Findings 218 and 220?

Q Mr. Pennoyer showed you Findings 218 and 220,

which relate to NASA, and I think a CAB report on the Twin Comanche. Would you look at those findings?

A Yes.

Q You testi-ied that these were public documents; is that correct?

A What was the second one? 218 and --

Q 220.

A 220. Yes; I did testify that.

Q Can you tell me whether these reports mentioned the Twin Comanche by name?

A I believe they do not mention the Twin Comanche by name.

Q And did you either have the code in the case of the one that was coded or the expertise in the one that just didn't mention any names to tell that that was the Twin Comanche?

A No.

Q You never looked at it, anyway; am I correct?

A That's correct.

Q Now, Mr. Ryan asked you about whether you had questions about a default at some point or whether you were in default in your institutional loans, your notes. I would like to know whether or not there is a provision under those loan agreements for notice of default.

A Yes.

Q Have you ever received a notice of default from your noteholders?

A No.

Q Those notes are still outstanding?

A Yes.

Q Do you from time to time negotiate waivers?

A Yes.

Q At page 307 you were asked by Mr. Ryan:

"Do you recall, in November, 1968, that your senior notes were amended?

"A Yes.

"Q What was the reason for the amendments?

"A To increase our borrowing power."

Did you negotiate that amendment?

A Yes; I did.

Q Did it have anything to do with purchasing Piper stock? Did you ask for it in order to purchase Piper stock?

A No. It was -- it was asked for to increase our borrowing power to an amount that was deemed appropriate under the circumstances, and there was no specific purpose.

Q What were --

A -- at that time.

Q What were the circumstances?

A We were borrowing $26,000,000 in convertible debentures, to be used for acquisitions of other companies, and we wanted to open up our bank lines to an amount appropriate to that size investment, so that we could use that money in acquisitions.

Q Were you borrowing the money for the purpose of purchasing Piper?

A No. We did not have any intention or plan at that time to purchase Piper.

Q Now, at page 326, I think Mr. Ryan or Mr. Pennoyer quoted to you from your testimony in Pennsylvania concerning the first purchase of Piper, and you then said:

"Basically, we thought it would be a good investment, and we would make it with a view to possible control."

And then, later on, you answered:

"All of our purchases were bought with that view, yes."

Now, Mr. Gordon, you had Warner Bros. stock at the time you bought Piper?

A Yes.

Q And you had M-G-M stock?

A Yes.

Q And you had Harley-Davidson stock?

A Yes.

Q What do you mean when you say all of your purchases are made with that view?

A Well, we didn't make investments -- we were not an investment company -- we didn't make investments in securities that were not possible partners or acquisitions for Chris-Craft. In all of the three instances youmentioned, we did either have or try to have negotiations or we considered the possibility of acquisition, but --

Q Did you ever make any decisions to seek control of Warner or MGM?

A No.

Q And you sold your block of Harley-Davidson?

A Yes.

Q And that was after another company had come into the picture?

A Yes.

Q It is no secret you sold it to Bangor-Punta? Isn't that the fact?

A That is the fact.

Q You said at Page 338, in answer tothe following question -- I will read it to you: This is by Mr. Ryan: "The fact of the matter is, Mr. Gordon, where was Chris-Craft

going to get the $8 million or $10 million that was necessary to buy sufficient shares at the end of its exchange offer to get the necessary 50 per cent?" He is talking about in August, when your exchange offer closed.

"A Is that a question?

"Q Yes.

"A If it was possible for us to get the 50 per cent, we could have gotten the financing. There is no doubt whatsoever in my mind about it."

First, your answer said "If we could have gotten the 50 per cent." Can you tell the Court why you attach such significance to that, "If we could have gotten the 50 per cent," why did you qualify your answer?

A Well, we wouldn't have been able to get financing to buy 47 or 48 per cent because we would have been in an unsalable minority position. Nobody would have financed us unless it were for 51 per cent.

Q What I am getting at is that there has been testimony about the fact that Piper's performance has deteriorated, you have had considerations with other potential buyers who have expressed views of the value of Piper, that it is under what Bangor paid, what youpaid; what is really the difference between having 42 per cent and 50 per cent.

MR. PENNOYER: Objection.

MR. RYAN: Objection, your Honor.

THE COURT: Sustained.

Q Is it your testimony that you would have been in a better position if you had 50 per cent than 42 per cent even though Piper has lost money?

MR. PENNOYER: Objection.

MR. RYAN: Same objection.

THE COURT: For what purpose?

Q For the purpose of raising money or getting out?

THE COURT: Why don't you come right out? Can you raise money on a control position that you can not raise on a minority position?

THE WITNESS: Yes.

THE COURT: Isn't that self-evident?

THE WITNESS: Yes.

THE COURT: It would have been a gamble to try and raise money against the uncertainty of getting that remaining 8 per cent.

THE WITNESS: Yes, your Honor.

THE COURT: And that gamble nobody would finance?

THE WITNESS: Yes, your Honor.

THE COURT: So you wouldn't have been able to get the $10 million if you didn't have it?

THE WITNESS: Not for a gamble, your Honor.

(Pause.)

MR. LIMAN: Your Honor, I asked for the report which at 281 was shown to Mr. Gordon, and Mr. Gordon pointed to a paragraph in it. We can't locate it at the moment, but I would like to read into the record the paragraph he was referring to when it is found.

Q I hand you the report, on Page 281 in answer to a line of questions by Mr. Pennoyer, which began with: "I want to simply ask you, did he nin any of those recommendations represent a certain sort of retrofit to the PA-30's?" I think Mr. Pennoyer said did he recommend a certain sort of retrofit to the PA-30's, and perhaps we can make that change in the record, and you answered, after several questions, Conclusion 5 -- would you read that into the record?

A "Modifications to existing aircraft to improve the stalling characteristics are considered necessary to provide a satisfactory level of safety."

Q Did he ever recommend any particular type of retrofit?

A No, he did not.

Q Did he ever say or undertake to design a retrofit for Piper?

A No, he did not.

MR. LIMAN: No further questions.

THE COURT: Any further cross?

MR. RYAN: I have a few questions, your Honor.

RECROSS-EXAMINATION

BY MR. RYAN:

Q Mr. Gordon, you testified on redirect examination by Mr. Liman concerning Defendant's Exhibit T for identification and you related a telephone conversation that you had with Mr. Maxwell.

A Yes.

Q In the course of that telephone conversation was there any discussion by Mr. Maxwell concerning the item appearing on Defendant's Exhibit T, "Cushion, $15 million."?

A Yes.

Q What did he explain as to what he meant by that notation?

A That was the dollar amount of other investments that we had at that time. That was our cushion.

Q That you had at that time or that you could invest at that time?

A He didn't have this document in front of him. I did. We were talking on the phone, just before I came in. That was '69 was the first time I could get him.

Q It was your understanding the term "cushion" meant the amount of money Chris-Craft had in other investments

at the time?

A The item I think speaks for itself. It shows a total of $33 million and then it shows "other investment now, 18." It says "cushion, 15," which appeared to be a subtraction of 18 from 33. The 33 is the debentures of 25 and the other investments at 11-30-68 of $8,163,000.

Q Isn't the 15 million the amount that was available for Chris-Craft that it could invest in? Isn't that what the cushion meant? Isn't that what Mr. Maxwell said?

A Yes.

Q You then testified that Mr. Maxwell indicated to you that you wouldn't get into a problem with the restriction on investments in other companies until you exceeded 500,000 shares? Was that your testimony?

MR. LIMAN: I don't think that is his testimony.

A No, that is not my testimony.

Q What did he say?

A That we would not have a problem except between 720 and 820, was his recollection.

Q That was his recollection?

A Yes.

Q Well, Mr. Gordon, suppose I suggest to you that if you divide 36, which is the price you paid or intended to pay on your tender offer for the Piper shares, 65 plus

a dollar commission, if you divided that into 15 million you come up with 227,000 shares and would that suggest to you that perhaps the figure was not 500,000 when Chris-Craft violated the investment, but you were going to be in default at 227,000 shares?

A No, no, that is not it at all. You can tell from the last paragraph, "If we get 15 million debit," -- we are talking about an assumption of 15 million more and the 227's, as you say, 15 million divided by 66, but there was no -- he -- that is the assumption on which this paper was worked out.

Q Mr. Gordon, under your senior notes did the $15 million you were going to get from the Philadelphia bank have anything whatsoever to do with your investments in subsidiaries?

A This is not the 15 million we were going to get from the Philadelphia National Bank, Mr. Ryan.

Q Mr. Gordon --

A It refers to a $68 price. Now, the 15 million we got from the Philadelphia National Bank was at the $66 price.

Q You also testified in your examination that you thought that if you had obtained 51 per cent of Piper that you may not be in default under the terms of the senior notes?

A I said we would not be in default.

Q Are you certain about that?

A Yes. Under the other investment clause, it doesn't apply.

Q In other words, the 51 per cent would be considered to be a subsidiary under your senior notes?

A For that purpose, yes.

Q You are certain?

A Yes.

MR. RYAN: We are going to offer a copy of the senior note agreement in evidence, your Honor, and I think that speaks for itself.

THE COURT: What is your contention on that score?

MR. RYAN: As we read it, you have to own 100 per cent of a company in order to qualify as a subsidiary. The note agreement was changed in November of 1968?

THE WITNESS: It was not changed in that respect and that is just an inaccurate reading.

THE COURT: I know the rival contention and now I will read the paper.

THE WITNESS: You might get lost in that. I often do, your Honor.

Q Let's get down --

A May I say one thing? There is a difference between the definition of consolidated subsidiary and subsidiary. The definition for the other investment clause is "Subsidiary." I cleared this and recleared it again this morning with counsel. That was who I was on the phone with when I came in.

Q Let us get to the next part, this conversation that you testified to that you had with Mr. Flick regarding the proposal by Chris-Craft to offer its Piper shares to Bangor Punta -- do you recall that testimony?

A Yes.

Q Who had this conversation with Mr. Flick?

A I did, Mr. Liman was present.

Q Was the conversation face-to-face or over the telephone?

A Face-to-face.

Q Where did this conversation occur?

A I don't recall just where it was. I may be able to find out. It might have been the Metropolitan Club.

Q Was it at a luncheon, or something?

A I don't recall which meeting it was. I remember the date but I don't remember whether that was the luncheon

meeting or not.

Q Who was present other than yourself, Mr. Liman and Mr. Flick?

A Mr. Wallace.

Q Anybody else?

A I think you were present.

Q I was present?

A I think so.

Q And anybody else?

A In fact, I am sure you were present -- pretty sure you were present. I forget if there was anybody else there.

Q The date was July 29?

A Yes.

Q You are certain of that?

A Yes.

Q Do you recall the time of day?

A No. I think it was the afternoon, though. It might have been morning -- I just don't recall. I have a notation to that effect somewhere.

Q Could you give us to the best of your recollection exactly what you said at the meeting and exactly what any representative of Bangor Punta said at the meeting, to the best of your recollection?

A Yes. I said that we would tender our stock or

would consider tendering -- we were beginning a negotiation here -- that we would consider tendering our stock to Bangor Punta in its tender offer -- our Piper stock if they would extend their exchange offer to bring the past six-month period and that they would have to have some way to get us out of the security with an underwriting -- I think I suggested that maybe First Boston would help out on that -- and we were told no, First Boston had already been approached to finance Bangor Punta and I think it was suggested that First Boston might not be interested because they had already turned down that other thing.

I think we had rented a room for that meeting, as a matter of fact, at the Metropolitan Club.

Anyway, Mr. Flick said, "That is very interesting," and I had the feeling that he thought of it before and I thought we were really onto something now, and they were going to get back to us, think about it and get back to us on it.

The next we heard on that subject was that the tender offer was closed.

Q Did Mr. Wallace say anything at this meeting concerning this subject?

A I believe he concurred with Mr. Flick that it was very interesting and I am sure he said they would consider it and get back to us -- he either said it or he concurred

in Mr. Flick saying, I don't recall.

Q Do you recall whether anything else was said concerning this subject?

A Yes, now I remember. Mr. Wallace said, "How can we give you people an underwriting to get you out of your stock if we are not going to give other people the same underwriting?"

Q And what else was said by you or anybody else?

A Then I said, "Perhaps that could be justified on the fact that we had a large block and required an underwriting."

Q Was anything said by anyone at the meeting concerning the exchange offer itself, about Bangor Punta's exchange offer?

A I don't think so.

Q Had you read a copy of the Bangor Punta prospectus of July 18 which contained the terms and conditions that related to the exchange offer?

A Yes.

Q Were you familiar with that document?

A Yes, I was.

Q Did you study it closely?

A Yes, I had.

Q Did you study the terms and conditions of the offer closely?

A Yes, I did.

Q Do you recall reading the terms and conditions concerning the expiration date of the Bangor Punta exchange offer?

A Yes.

Q Do you recall what the expiration date was?

A I think it was that very day.

Q Do you recall whether there was anything in the language concerning the expiration date as to what had to be done in order to extend the exchange offer?

A No.

MR. RYAN: I would like to now mark as Defendant's Exhibit U for identification the copy of July 18,1969, Bangor Punta prospectus concerning the exchange offer, and offer it in evidence.

THE COURT: Received.

xxx (Defendant's Exhib it U received in evidence.)

MR. LIMAN: It has been received as an SEC exhib it, your Honor.

THE COURT: All right, then it is doubly received and has double weight. Go ahead.

Q Let me read from Page 6 of the prospectus under the heading "Expiration date," and see whether this refreshes your recollection as to what the terms and conditions concerning the exchange offer were:

"Expiration date. The exchange offers will expire at 5:00 P.M. New York time on July 29, 1969, subject to the extension of either or both of them by Bangor Punta for a further period or periods terminable by Bangor Punta on not less than 24 hours' notice delivered to the exchange agent."

Did you read that condition?

A I must have then.

Q Bangor Punta couldn't have extended the exchange offer on July 29, could it?

MR. LIMAN: Objection. I don't think that is a correct interpretation.

(Document handed to the witness.)

THE COURT: What does the witness think about it?

THE WITNESS: I would have to read the document before I could --

MR. RYAN: That is Page 6, bottom paragraph.

(Pause.)

Q Do you recall reading that, Mr. Gordon?

A Yes. The sentence that follows states, "Each such date as so extended is herein referred to as its expiration

date," and then there is a proviso "Provided Bangor Punta shall not extend either of such dates beyond September 30, 1969, unless the approval of the exchange offer by its stockholders shall have been obtained."

THE COURT: The simple question is whether on the date when the offer expired you could give 24 hours' notice of an extension?

THE WITNESS: I think the question was whether they could extend the exchange offer.

THE COURT: That's right.

THE WITNESS: Yes, they could have, your Honor.

MR. RYAN: No further questions.

MR. LIMAN: May I show the document to your Honor --

THE COURT: Wasn't that your question?

MR. RYAN: Yes, your Honor.

No further questions.

THE COURT: I will read the document and see what it says. Mr. Ryan says that on the date when the offer expired he no longer had 24 hours and he needed 24 hours for extension.

Mr. Liman and Mr. Gordon say that is not what it says.

THE WITNESS: That is not what I said, your Honor --

MR. LIMAN: Could I read the language, your Honor?

THE COURT: Please, let the witness tell me.

On July 29th ~~their~~ there not having been any extension prior thereto, could there have been an extension of that offer under the terms as contained on Page 6 of that exhibit?

THE WITNESS: The language to me is not clear as to whether it is a 24-hour notice prior to 5:00 P.M. that is required or whether any 24-hour notice will do it, but I am going beyond that and stating this expiration date is also amendable and it may have given people the right to withdraw, but you might have assumed nobody would have withdrawn. The offer could have been extended whether or not this 24-hour notice is a technical requirement.

THE COURT: That is what Mr. Ryan says he couldn't do and I understand the controversy.

MR. ARNING: Just two fast questions, your Honor.

RECROSS EXAMINATION

BY MR. ARNING:

Q By July 29th, the six months had expired as to the 200,000 shares purchased prior to the beginning of the cash tender offer, isn't that correct?

A Yes.

Q As to those that you acquired, the 112,000 shares on the exchange offer in August, I take it that you could have either withdrawn or you would have a very small, if any, profit on those 112,000 shares, isn't that correct?

What I am trying to get --

A I didn't have the 112,000 shares at that point.

Q That's right.

You weren't compelled to have a 16-B problem on those?

A No.

Q So the 16-B problem related only to 300,000, approximately, out of the total number of shares you held.

A I strike the "only." Those shares.

MR. ARNING: That's all.

A (Continuing) The tax problem.

THE COURT: We will recess now until two o'clock.

Is everybody through with this witness?

MR. ARNING. All through.

THE COURT: You are excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

(Recess taken to 2.00 p.m.)

AFTERNOON SESSION

2.00 P.M.

(In open court)

MR. LIMAN: I am sorry, your Honor. I neglected to cover one small matter with Mr. Gordon which I discussed with Mr. Pennoyer.

- - -

C H A R L E S L E O N A R D G O R D O N,

recalled.

REDIRECT EXAMINATION

BY MR. LIMAN (CONTINUED):

Q Yesterday at page 276 of the transcript your attention was directed to finding 241, which is:

"Certain minutes of the Piper board of directors with respect to an increase in insurance premiums."

Mr. Pennoyer asked the following question and you gave the following answer:

"Q And does the check that is quoted in finding 241 refresh your recollection as to whether Mr. Piper on that occasiontold you that the insurance premium increase was attributable to any particular product of Piper?

"A As a matter of fact, he said it at an earlier meeting, I believe."

Have you done anything to refresh your recollection as to when and what Mr. Piper said?

A Yes, I have read the minutes, the correction on the minutes of the September 8th meeting, and I have thought about it.

Q And the minutes of the September 8th meeting are the minutes that Mr. Pennoyer read to you in finding 241?

A Yes, and the meeting that I was referring to was this meeting, and it was the meeting discussing the settlement of the Cramer action.

Mr. Cramer was the paraplegic who had been rendered this way in a TwinComanche crash, and the minutes said:

"In response to a question from Mr. Gordon, Mr. Piper advised that there was no question that the insurance premium of the corporation would be affected by the loss experience of its insurance carrier, and that, in fact, he believed that the cost of settlement for claims against the corporation had exceeded the premium for every one of the previous eight years."

Is that substantially what Mr. Piper said at that

meeting?

A Yes.

Q The minutes substantially reflect --

A That's the substance of what he said. That's what I was referring to.

RECROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Gordon, the Cramer action to which you just referred was tried when?

A It was tried at about -- shortly before this time. It was settled then.

Q What is the date of that minute thatyou have reference to?

A September 8, 1970.

It was tried and settled shortly before that. It was pending before that.

Q It was settled on trial?

A Yes, it was settled on trial.

(Pause)

MR. PENNOYER: I have no further questions, your Honor.

MR. LIMAN: No further questions.

(Witness excused.)

MR. LIMAN: Herbert Siegel.

HERBERT J. SIEGEL,

called as a witness on behalf of Chris-Craft Industries, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Siegel, would you keep your voice up so that not only will the Court be able to hear you but counsel can hear?

A I will try.

Q What is your age?

A 42.

Q I could heardly hear it.

And your educational background?

A I graduated Lehigh University, 1950, majored in journalism.

Q You have to speak just a little louder.

A I will try.

Q What position do you hold today?

A Chairman of the board and president, Chris-Craft Industries.

MR. RYAN: I can't hear it.

Q How long have you held the position of chairman of the board of Chris-Craft?

A I believe I was chairman of the board in December of '67.

Q And before that what position did you hold?

A Chairman of the board of Bladwin, Monstrose Chemical Company.

Q Prior to December 30, 1968, had you ever given consideration on behalf of Chris-Craft Industries to acquiring stock or a company in the light aircraft industry?

A Yes.

Q What had you considered, and, roughly, when was it?

A I believe in '67 we discussed with Mr. Sherill, who was then the chairman of Chris-Craft, about Chris-Craft buying some Beech Aircraft stock.

Q At that time did you have a position with Chris-Craft, an official position when you discussed it with him?

A No, I did not.

MR. RYAN: Your Honor, I did not hear a time, unless I missed it. I can't hear Mr. Siegel. Will he please raise his voice.

MR. LIMAN: Will you read back the answer to the question.

(Record read.)

Q Were you a stockholder at that time of Chris-Craft?

A Yes, I was.

Q When you say that, do you mean Baldwin-Monstrose?

A Yes.

Q Now did you give consideration to acquiring any other light aircraft company prior to December 30th?

A Yes, we did. We had negotiations with Ted Smith Aircraft I think was the name of the company in the summer or spring of '68.

Q When did you decide to make your first purchase of Piper stock?

A December 30th, the day that we bought the stock.

Q Who made the decision on behalf of Chris-Craft?

A I did.

Q How many shares did you buy that day?

A About 5000 shares.

Q At the time you made that purchase had you read anything about Piper Aircraft?

A I read the small Standard & Poor's sheet or booklet on it and I read the 1967 annual report.

Q Had you read any magazine article about it?

A Yes. I read Forbes magazine article about that.

Q What was your intention when you made your first purchase of Piper with respect to Piper?

A Buy some stock, take a look at the way the stock would come in and discuss it with the rest of the directors to see whether we should go further on it.

Q During the period from December 30th up to January 21st did you discuss Piper with other directors of Chris-Craft?

A Yes.

At one time or another every one of the directors.

Q Was there an investment committee of Chris-Craft?

A Yes.

Q Do you remember who served on it?

A Mr. Sherill, Mr. Rocklis and myself.

Q What were Mr. Rocklis' responsibilities with respect to acquisitions?

A Mr. Rocklis would analyze the companies and he kept files on something like 2100 different leisure-oriented or leisure recreational companies.

Q Did Mr. Rocklis have a background as an analyst?

A Yes, he did.

Q What was that background?

A He was with an investment banking firm up until I think '59 or -- 1959.

Q Until he joined you?

A Yes.

Q Had he been with you ever since that time?

A That's correct.

Q Did you have discussions with Messrs. Rocklis and Sherill and Gordon and other of your directors in this period up to January 21st?

A Yes, we did.

Q It is a stipulated fact in this case that up to January 21st Chris-Craft purchased approximately 100,000 shares of Piper over the New York Stock Exchange.

Did you place the orders for those purchases?

A Yes, I did.

Q And in making those purchases, what was your intention?

A To buy stock.

Q And what was your intention with respect to the Piper Company?

A Well, the intention during that period was to buy some stock and see how the market went and whether we wanted to go further.

Q As of that time had you committed yourself, even mentally, to the notion of seeking control of Piper?

MR. PENNOYER: Objection.

MR. RYAN: Same objection.

THE COURT: Sustained.

Q Now had you made any decision, Mr. Siegel, up to January 21st about seeking control of Piper?

A No, we did not.

Q Now did you, some time after you made your first purchase of Piper, hear the name Technology Fund in connection with Piper?

A Yes.

Q And how did that name come up?

A Well, as we were buying stock, the -- one of

the brokerage firms told me that Technology Fund showed on the Vickers sheet, or whatever it is, 100,000 shares of Piper stock.

Q And do you rememberwho told you that?

A I believe it was Roger Spencer.

Q Of Mitchell Hutchins?

A Of Mitchell Hutchins, right.

Q And did you ask him to do anything with respect to that block?

A To find out whether they were interested in selling.

Q And do you remember when that was?

A I would say somewheres maybe a week before the 21st.

The 15th. It must have been after the 15th because we had an annual meeting.

I would say around the17th or some date like that.

Q Did Mr. Spencer report back to you with respect to this request?

A Yes.

Q What did he tell you?

A He told me that they weren't interested in selling the block.

Q Now directing your attention to January 21st, can you tell me what happened on that day?

A Either on that day or the day before, Mr. Spencer told me that Mr. Hawkinson, who was head of Technology Fund, was going to be in New York, and that if I wanted to meet with him and discuss with him about Chris-Craft he may be interested in talking to us about Chris-Craft.

And I said, "Does he still have the Piper stock?"

And he said, "I think he still does. He hasn't sold it."

So we had a couple of discussions about:

(a) -- when I say "we," I am talking about -- many of the directors are in the same office --

MR. RYAN: Excuse me. His voice keeps on falling and we can't hear what he is saying.

MR. LIMAN: Mr. Siegel doesn't have a loud voice. If Mr. Ryan wants to move up here, he can.

THE WITNESS: I am sorry. I will do the best I can.

MR. RYAN: May I hear the answer, please, your Honor?

(Answer read.)

THE COURT: All right.

BY MR. LIMAN:

Q Whom did you have discussions with?

A Mr. Rocklis, Mr. Gordon, Mr. Barnett -- I believe Mr. Barnett, Mr. Hollander, if he was in New York at that time.

We eat together, generally, so there -- the question was: If Mr. Hawkinson had this block of stock, (a) would we be interested in buying it, and, (b) if we bought it, what should we do ar that point? Were we in -- whether we should go further or not, et cetera.

Q And did you reach any conclusions on these discussions on the 21st?

A No, because as late as the night -- about seven o'clock that night, Len and I were driving home -- I am talking about Mr. Gordon -- and I said, "If we buy the stock do we have any filing problems? Would it be over ten per cent?"

Their annual meeting was coming up February 4th. All of this would have something to do with the strategy of whether you bought or didn't buy, and if you were going to

buy, what would you do after that?

Q Now prior to this time, had you read anything additional on Piper Aircraft?

A Yes. We had gotten the '68 annual report by then.

Q Had you read it?

A Yes, I did.

Q And did you read anything else -- you personally?

A No. The Standard & Poor sheet, the yellow sheet --

THE COURT: You say that you got the 1968 annual report by January 22nd?

THE WITNESS: Yes. The year end was September, sir.

THE COURT: That was the 1967 annual report.

THE WITNESS: I had the '67 on file. The '68 --

THE COURT: In other words, the period September, '67 to September, '68 is what you are talking about?

THE WITNESS: Right.

Oh, one other piece of information:

We did have and I read the proxy material.

Q Of Piper?

A Yes.

Q Now when did you first discuss the possibility of making a tender offer for Piper?

A The possibility, I guess on the 21st.

Q And with whom did you discuss that?

A With Mr. Gordon, and I am sure with the rest of the directors who were there.

Q And what was said on that subject?

A Well, it was questionable whether we bought the block, whether we should buy the block, and whether we should make a tender, and if we made a tender, you had an annual meeting coming up on the 4th.

If you made -- if you went over the ten per cent and you made a tender, you would not be able to vote that stock unless you had the proxies with it, so that pu could be locked out of any representation on the board for a little over a year.

Q Now what happened on the 22nd?

A On the 22nd, Len and the other gentlemen -- we talked about whether we should buy it. The meeting was coming up at 2.30.

And I said, "You know, I am not sure we haven't bought some of that stock anyway," because we

had gotten an awful lot of stock.

So I didn't know for sure whether the Technology Fund actually really still had their block intact, you know.

Q And did you have a meeting that day, on the 22nd, with the Technology Fund people?

A Yes, I did.

Q And in substance what happened at that meeting?

A Well, I was introduced to Mr. Hawkinson by a partner of Mitchell Hutchins -- I think his name was Mr. Coleman -- and Mr. Spencer, and we discussed the whole leisure time recreation concept of Chris-Craft, and then we discussed their position in Piper Aircraft.

Q And did they tell you that they had a position?

A Yes, he did.

Q What did he tell you?

A I think he said he had 101,000 shares of Piper.

Q And then did you have some discussion about that position?

A Yes.

Q What was said on that subject?

A I asked whether he was interested in selling the block and he said not at the market.

Q What was the market then? Do you have a recollec-

tion?

A My best recollection is like 52 or 53, something like that.

And Mr. Gordon was present, and I said to him, "Would you sell at $60 a share?"

And he said, "No, I wouldn't recommend selling it at $60 a share."

And we discussed back and forth on this because I was trying to find out how high he really was going. I said we would go -- we finally agreed to $65 a share. And he had to call his office in Chicago, and Len and I had to discuss it with directors, et cetera.

So I think he went in the other office, or we might have walked out of my office.

Q Now did you then discuss it with your directors?

A Yes, I did.

Q And did you reach a decision with respect to the purchase of that stock?

A Yes, we did.

Q Now did you have a discussion of a tender offer at that time also?

A Yes.

Q And with whom did youdiscuss that?

A WEll, in the course of conversation with Mr.

Hawkinson we said to him, "Well, if we give you $60" -- and he didn't want to accept $60.

We said, "We might give you a favored'nation's clause that would allow you that if we tendered within 90 days or 120 days at a higher price," we would escalate up his price to the tender price.

Q Did you discuss a tender offer with your directors?

A Yes, we did.

Q And did you reach a conclusion on that day?

A Yes, we did.

Q And what did you decide?

A That we were going to buy the block and we were going to make a tender offer.

Q Now who made the decision? Who prepared the tender for 300,000 shares?

A I did. There was a great deal of talk about it, but I made the recommendation.

Q Well, what did you say with respect to the number of shares for which the tender should run, and what did others say, as best you recall?

A Well, we were going to tender so that we got the vote of the stock for the meeting.

Q Who told you you could do that?

A Len did.

Q When did he tell you that?

A He called from the zoo, on the morning of -- I think it was the 22nd.

Q And what was said on the number of shares, 300,000 shares?

A Well, we wanted to pick a number that would give us an attainable number. In other words, you don't want to make a tender, especially in those days, where you fell short of what you asked, and it had to be large enough to make sure that you got directors on the board, and it couldn't be too large because you have to have your financing completed in order to make, let's say, a complete tender.

Q And were these the factors that led you to propose 300,000 shares?

A Yes.

Q Now did you or did anybody else suggest tendering for a higher number?

A I don't remember whether someone at some point said maybe we should go for 400,000 or maybe we should go for 250.

I know that we discussed numbers.

Q And was there any discussion of a higher number

that you recall? 1530A

A Not that I recall offhand.

Q And why did you decide to propose 300 as opposed to a higher number?

MR.RYAN: Your Honor, I object to leading the witness. I think that he should be able to limit his --

THE COURT: The objection is sustained on that ground and also on the ground that it is repetitious.

Q How did you decide on the price?

A During the course of conversations, Mr. Hawkinson had mentioned that he didn't think you would get much stock if you tendered at $60, $61, and the price tag of the stock once, I think, had hit 70 or 71 dollars, I think, something like that.

Q Now was there any discussion of how you would finance the purchase of 300,000 shares?

A Well, I knew that we had the money to do it.

Q You say you knew. What are you referring to?

A Well, we had approximately $35 million in excess cash after the bond issue, and I had banking lines that I knew I could call on.

Q Had you made arrangements with any banks at that time to lend money for Piper?

A On Piper specifically?

Q Yes.

A I don't believe so.

Q Now did there come a time when you sought additional financing for Piper --

A Yes.

Q -- stock purchases?

A Yes.

Q And when did that occur?

A Near the end of the tender offer, we ware --we felt that there is a possibility that we might get 51 per cent of the stock tendered, and, if so, we ought to have the financing available.

Q And what if anything did you do to procure the financing?

A Well, I talked to Armand Erpf and then to John Loeb.

Q What did you say to them and what did they say to you?

A I said it is possible that we are liable to get 51 per cent of the company thrown at us, and if we do we ought to be able to buy it or at least make that decision, whether we want to do it or not. And they felt that the financing could be arranged. They said -- I think

we used that terminology here, your Honor, that one warrant

there was a meeting with one of the younger partners at Loeb Rhoades and Armand about them arranging financing abroad.

Q Did you seek financing from any other source?

A Yes. Mr. Gordon arranged with Burnham & Company to get $25 million from, I believe, England.

Q Why did you seek financing from Burnham & Company?

A Well, Mr. Gordon was prejudiced towards Burnham and he felt Tubby would move faster, and Loeb Rhoades would take a longer time to arrange it.